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ABSTRACT

This booklet, intended for use with junior high school students, contains background readings on specific areas of the legal system and case studies of authentic court decisions relevant to each area. The purpose of the booklet is to introduce students to the influence of law on everyday life and to make them aware of the legal heritage and legal system of the United States. The booklet begins with a history of U.S. law. This history includes a discussion of how customs became law, the laws and customs of England, how English law was carried to Virginia, the first legal code, first representative government, how the court system was created, the Pilgrims law, how England violated the legal rights of the colonies, the establishment of the Confederate government, and the Constitutional Convention. Following the history, eight specific areas of the legal system are defined, explained and illustrated: constitutional law, torts, property, contracts, family and juvenile law, civil procedure, criminal procedure, and corrections. Following the discussion of each area authentic court decisions are described. The facts of the case and the decision of the court are provided for each. The guide concludes with a glossary of legal terms, a bibliography and addendum containing charts, and facsimilies of legal documents. (Author/RM)

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OUR LEGAL HERITAGE

A Case Approach

SP 012 801

Developed by

the Alabama State Department of Education

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FOREWORD

The purpose of this curriculum is to provide the student with a better understanding of that part of everyday life which is influenced by law. The main objective is to create for the student an awareness of our legal heritage and the legal system. This can best be learned and appreciated in the atmosphere of its own history. Much emphasis, therefore, is placed on the historical background.

There is obviously no attempt to develop a course of study that would permit the student to believe that after he has mastered the content he could become a practicing attorney. This is not designed to be a do-it-yourself law course. This is simply a brief touch upon certain essential concepts and understandings which would enable the student to become a more knowledgeable and functional citizen. Law in its full scope is a very complex and difficult profession which requires years of study and practice in order to master certain specialized fields.

The materials contained in this course emphasize a case study approach. The student is cautioned to understand that these cases merely reflect trends and impressions. Law in our society is subject to constant change by interpretation and legislation. This material is not intended to be the answer to all legal questions.

Our society is becoming more complex day by day. A technically oriented nation with a rapidly increasing population problem causes some authorities to state that the day will soon come when a family lawyer may become as necessary as a family doctor. The lawyer is a vital part of our system of justice. This professional, with his years of training, is an essential element in a democratic system such as ours. Without his assistance the preservation of individual freedom and justice would be placed in great jeopardy.

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INTRODUCTION

Suppose that you and I become involved in a dispute. The dispute may be caused by a business misunderstanding, a disagreement over property rights, or perhaps we are involved in an automobile collision. At any rate, you and I discuss our dispute at length but are unable to reach an agreement. You are of the opinion that I owe you damages in the form of money for you feel that I am at fault. Of course, I feel that I am not at fault. Because of your determination to see that I pay damages you seek the advice and counsel of a lawyer.

Your attorney obtains from you all the information that relates to our dispute. Only when he has the best information available can he make a determination as to whether I may or may not be at fault. He listens attentively to your side of the story to obtain all the facts. He may choose to discuss some of the facts with other people that you indicate know something about or were involved in our dispute. Finally the attorney advises you that state law would seem to be on your side. He checks case reports seeking to find previous cases that have been determined in similar disputes. If he finds no such case in Alabama law, he would then look at volumes of court cases from other courts in an effort to determine how courts would rule on our dispute. Taking all of this into consideration, you and your lawyer decide to sue me for damages and I am so notified. The notification letter states that you seek damages in the amount of $7,131.31, plus

interest on this amount at the rate of six percent, plus court costs and attorney fees. Because you are bringing me into court seeking damages you are called the *plaintiff* in the case. As the plaintiff you are of the opinion that you have been wronged. I become the *defendant* or the accused wrongdoer.

Realizing that you intend to sue me in court; and that, if sued and adjudged to be at fault, I would have to pay you up to $7,131.31 and perhaps interest, court costs, and attorney fees I decide that I had better get an attorney to represent me. I approach my attorney in much the same way that you do, presenting the facts as I deem them to be and directing the attorney to others who may know about our dispute. My attorney researches the law of the state, prior court decisions, and decisions that had been made in other courts that relate to the point of law in dispute. In the opinion of my attorney he feels that we can successfully defend ourselves in court.

Our case is scheduled on the docket of the county circuit court. If our dispute involved a question relating to federal law or citizens of different states, we could go to a federal court rather than a state court. If I had committed a crime against the state or federal government, governmental representatives rather than another individual, would bring legal action against me. It will probably be at least six months before we actually appear in court to settle our dispute. During this period of time our attorneys follow the court rules by exchanging information concerning your position and mine. Our attorneys are also engaged in attempts to discover additional information that might assist them in representing us in court. On at least one occasion before we have our day in court our attorneys meet with the judge in his office to see if there is any possible way that we can compromise

without court proceedings. Knowing that if you win, I may stand to lose thousands of dollars, I suggest that my attorney offer to you, through your attorney, $6,000 to settle the whole thing. You and your attorney discuss this offer but decide to go to court and attempt to obtain the full amount of damages. Realizing that a compromise is not possible, the judge sets a time for the court trial on a given date.

When our day in court arrives, you and your attorney and any witnesses who are to testify in your behalf appear along with my attorney, any witnesses we may have, and me. Depending on the nature of the suit and the request of your attorney and mine, it is likely that a jury will be selected to hear the case. It is the duty of the jurors to make a judgment concerning the testimony that is presented in court. The jurors will determine which one of us is actually at fault. It is the responsibility of the judge to make determinations concerning the law itself and to help the jury with what would be a proper amount for damages. After all the evidence is presented and the arguments are given, pro and con, the county circuit court arrives at a decision. In our case the decision is that I was at fault and you should receive the full amount of damages requested. The circuit court reporter has made a stenographic recording (and sometimes a tape recording) of the entire proceedings of the court; but routinely, no written record is made from the tape.

Of course, I am very disappointed in the result of the court decision. My attorney and I feel that the court did not arrive at the proper decision in our case. We, therefore, appeal to a state court of appeals in order to have our case reviewed. I am now the *appellant*, and you are the *appellee*. The appellant's attorney has the court reporter and the clerk make a

complete written record of the court proceedings in the lower court. This written court record, along with briefs developed by attorneys, is forwarded to the appeals court. After several months pass, the appeals court will hear our case. Normally only our lawyers will be there to represent us. They will be given a set period of time, possibly 15 to 30 minutes, to present our respective viewpoints before a panel of several judges. No jury will be present. After the presentations are made, the judges will discuss our case among themselves and write a decision based upon their findings. This written appeal court decision will become a part of a permanent court record that will be included in printed volumes of law cases. In years to come other lawyers will review what the appeals court decided in our case to assist them in making judgments.

As it turned out in our dispute, the state court of appeals agreed with the decision of the lower circuit court, affirming a judgment against me. Chances are that on the advice of my lawyer and on direction of the court, I will have to pay you the $7,131.31, plus the interest that has accumulated over the period since our dispute began (you may want to calculate this amount), plus court costs and attorney fees.

In some cases it is possible that on the advice of my attorney we might appeal our case to the state supreme court if the appeal did not go there initially. My attorney might feel that our dispute is really not clearly defined by state law and has never before been decided in court cases. Based upon the fact that in his opinion we have an unusual situation, he may request a hearing before the state supreme court. This would involve another period of several months of waiting before a final decision could be made as to whether you were right and I was wrong as determined by our legal system

of justice.

Our dispute is settled in court in your favor. From the very beginning every effort was made by our attorneys and the judges to settle our dispute among ourselves without court determinations. The courts of our state and nation are crowded with cases waiting to be heard. It is often in the interest of the parties in dispute, the court systems, and everyone else involved to make every effort to settle a case out of court. At the same time, it is important that justice be done when disputes arise and that an individual has an opportunity to present his case in court when necessary. You can begin to see that members of the legal profession, including lawyers, judges and other court officials must know the law thoroughly, must honor and respect the rights and privileges of citizens in dispute, and must be professional in their dealings with others. Only in this way can our system of legal justice be administered fairly and without favor.

SOURCES OF LAW

Now that we have tried our first case, let us go back in time and examine the circumstances which led to the possibility of such justice. What is the source of our laws? Laws were created or handed down in many ways. First of all, rules and regulations for any society have much in common and, therefore, are similar in many ways. Over the centuries man has established fundamental rules designed to protect and preserve his particular society. In many instances, because of wars and migration of people, certain habits, customs, and ways of life have spread from one locality to another. The United States, often referred to as the melting pot, is a compromise and fusion of the customs and habits of many societies.

The common law of England is a good example of the influence of many cultures. This is the law we inherited when the settlers began to migrate to this country. It is based on customs and folkways and formed the basis for English justice and the beginning of American law. During the Anglo-Saxon period of England custom was law. There was no system of codes, no legislature, no courts as we know them today. Custom determined the crime and the punishment. Local customs, as determined by those in authority, were decided by lay citizens and not people who were professional lawyers or judges.

In most of our states, the law is still based primarily upon the common law. The *common law* is case law. The cases decided in the past form the

basis for most of the court decisions. Because a modern society demands a constant reexamination of existing laws in order that justice might prevail, it has become increasingly evident that judges may also be lawmakers (through interpretation) as well as law dispensers.

Even though the United States is basically a common-law country, its legal system is based on statutes as well. The term, *statuatory law*, refers to the laws (statutes) passed by the state legislatures and Congress and recorded in some form. Today a successful lawyer or judge must know or have ready access to both the statuatory law and the court cases.

Our complex society has led to another type of law which is generally called *administrative law*. This law deals with the rules and regulations established by the many federal and state agencies. The Federal Communication Commission (FCC) and the Atomic Energy Commission (AEC) are good examples of such agencies. They create rules relating to broadcasting (FCC) or to atomic energy (AEC) that have the same effect as law. Local boards of education also determine rules and regulations with the power of law behind them even though these rules are not local ordinances or state laws.

Local ordinances are sources of law that influence our daily lives on a continuous basis--local taxes, parking meters, traffic regulations, building codes, sanitation and health codes; and a multitude of local rules and regulations. These govern our activity and protect our interests. An urban community with a large population would require more local laws than would a rural community with a fairly simple way of life.

Law, then, is a reflection of all these influences. Because law has become so complex and technical the citizen who decides to make a career of law may be forced to specialize. He may select criminal law, civil law, administrative law, maritime law, international law, income tax law, or

some other area in which he is interested.

Today it is becoming evident that cases decided years ago may not be valid decisions for a modern and changing society. A study of case law will indicate to the student that changing times cause changes in legal decisions. Social, economic, and political structures will vary from one generation to the next and legal rulings will reflect these changes in our society.

When a trial occurs today and the case is decided and becomes a part of history, a permanent record of the proceeding is kept at the courthouse. Cases appealed from lower court decisions and some lower court decisions appear in books known as the Reporter System. For example, suppose we look at the citation for the following appealed case which you will study later.

Lefkowitz v. Great Minn. Surplus Store
251 Minn. 188
86 N.W.2d 689 (1957)

The title of the case, Lefkowitz v. Great Minn. Surplus Store, tells you the names of the parties. This case can be found by looking in two different sources. 251 Minn. 188 means that by going to Volume 251 of the Minnesota Reporter and looking on page 188 you will find this case recorded. You can also look in 86 N.W.2d 689 for the same case. This means that it can be found by referring to the North Western Reporter, Volume 86. Then by turning to page 689 of the 2nd Series the Lefkowitz case is found. The decision was written in the year 1957.

Cases tried in state courts are not recorded in the same books with cases heard in federal courts. Citations, therefore, will be different. The Lefkowitz v. Great Minn. Surplus Store is an example of a state case. Let us now look at a federal case you will also be studying.

United States v. O'Brien
391 U.S. 367, 88 S.Ct. 1673.
20 L.Ed.2d 672 (1968)

Just as in the state cases, the title, United States v. O'Brien, identifies the parties. The other information tells you where you can find the details of the court proceedings. It is recorded in three different publications - The United States Reporter, The Supreme Court Reporter, and the Lawyers' Edition, second series. As in the state example, the numbers identify the volume and the page where the case can be found and the year of the decision.

HISTORY OF UNITED STATES LAW

Origin of Law

Man has always sought ways to acceptably manage group affairs and associations. Even the cave man had some form of family discipline as to the division of labor and other responsibilities in regard to survival and protection. Regulation is the foundation of the survival and progress of every society - the more complex the society, the greater the degree of regulation. For example, what would happen if there were no speed limits or traffic lights and no required driver's test or license? Without these regulations when would it be a good time for you to cross the street in downtown New York City or Los Angeles? What would be the results if people could set themselves up as surgeons without receiving special education? Would the lack of this requirement mean anything to you if you suddenly needed a serious operation? Since you and your family cannot raise all of your food, what kind of health problems might you encounter if the food you purchased did not have to meet certain quality standards?

When did the idea of having laws begin? When did man first begin to think of some actions being wrong? How did he first originate the idea of punishing another if this person committed one of these acts considered wrong?

Folkways and Customs. Man lived many ages before these ideas took form.

For many centuries man's conduct was governed by nothing more than the collected experience of his forefathers, which he followed unconsciously. We call such ways of conduct *folkways*. Folkways differ from *customs* in that customs are followed consciously even though we do not know why or how a custom originated or what purpose it served.

Primitive men seem to have been unusually well behaved. They needed no policemen. Each person appears to have been completely honor-bound to follow the customs of the tribe. True, no one wanted to risk the anger of the medicine man or the wrath of the chief. The most significant discouragement to violating one of the taboos of the tribe was the fear of falling into disfavor with the group. Just as today, you may sometimes rather face an angry parent than violate one of the codes of your friends.

The primitive youth was initiated into the mysteries of his own tribe in a manner that impressed him with the necessity of conforming to the tribe's customs. Many had some of their front teeth knocked out with a club. Others had their teeth painfully filed down to sharp points. Some had incisions made in their backs into which something was rubbed to prevent rapid healing. This produced large scars which would attest to their toughness. These experiences accompanied with long and emotional ceremonies impressed a boy with the importance of passing into adult membership of the tribe. He took great pride in its customs.

Customs Become Law. Each group built up its own set of customs. All of them may not have been original. The people borrowed an idea and may have changed it or they were conquered and had a practice imposed upon them. Many of these customs developed into *customary law* and from that into *law*.

Which group then developed the customary laws that have become our laws?

Our legal institutions can be traced to those of the countries which ruled our nation before its independence. There have been sizable contributions from the French and Spanish and certainly the Greeks, Romans, and the laws of Moses have significantly contributed to our legal heritage. Most of our legal traditions are based upon the English common law. Thus, we shall be concerned primarily with the English-American origin and development. To do this we must go back into time to a period just before the birth of Christ.

LAWS AND CUSTOMS OF ENGLAND

Latinizing of Celts

Overrun by Romans. In 54 B.C. Julius Caesar moved the mighty Roman legions across Europe and began his invasion of Gaul (present day France.) The Franks stubbornly resisted their invaders. Caesar learned that part of this resistance was due to the aid they were receiving from their island neighbors to the west. To cut off this aid, Caesar took a portion of his army and moved across the channel and began his attack on England. Caesar described his enemy as being tall, with white skin, light hair, and rippling muscles. These fierce warriors that painted themselves blue before battle to frighten their foe, stopped the pride of Rome and forced their withdrawal. Ten years later, however, the Romans returned--this time to stay for four centuries.

The Romans and Latinized people from Europe that followed the soldiers brought with them the Roman talent for organization and government. They immediately began to make England a true Roman colony or province. To do this they had to weaken the existing laws and customs.

Druid Lawgivers. Chief inhabitants of England at that time were the Celts.

The most important persons among the Celts were their priests called Druids. These Druids were not only the priests but also the keepers of the laws and customs. They were very jealous of their power and position as lawgivers. To protect this power, they wrote the laws and customs in scrambled words and sentences. No one could read them unless he knew the code.

All disputes were submitted to a Druid for settlement. If one of the disputing parties refused to submit the problem to judgment, the Celts had a unique way of forcing action. For example, if Russell owed William some money and would not pay it, William would go to Russell's house and sit at his front door. He would also refuse to eat. If Russell permitted William to sit there until he starved, the people would denounce Russell. Before Russell would allow this to happen, he would consent to go to a Druid for settlement. If the decision was in favor of William and if Russell did not have the money to pay the debt, William could seize a portion of Russell's property valued at the amount of the debt. If Russell had neither the money nor property, William could enslave Russell and his family until the obligation was satisfied.

To be denounced by the people or to refuse to abide by the decision of a Druid meant that one could not participate in the sacrificial ceremonies. This was considered the worst of all crimes. Other Celts would avoid him for fear of some evil spirit possessing them because of their association.

The Roman invaders crushed the power of the Druids, permitting the Celts and England to be quickly Latinized. With time, however, the Empire weakened and Rome's control on distant lands was loosened. England, like other holdings, became an invitation to conquest and between 417 and 429 A.D. a new invasion of the island began. The citizenry who had for many centuries relied upon the Roman army for protection was now helpless without it.

Changes Effected By Germanic Invaders

Germanic tribes of Angles, Saxons, Jutes and Danes from the Netherlands, Germany, and Denmark over a period of several hundred years did a thorough job of weakening the Latin civilization established by the Romans. They brought their own customs with them and England then became as much of a German society as it had been Celtic and Latin.

The different German tribes and groups formed a number of petty kingdoms, each under its own ruler. One of the kings was considered the ruler of all England. He may, however, have had less power than some of the other kings. To be able to better enforce the customary laws and wishes of the king, each kingdom was divided into shires (counties). A shire was governed by an ealdorman appointed by the king. He was usually a great noble and owned extensive tracts of land in the area he governed. To assist the ealdorman, the king also appointed a shire reeve. It was the responsibility of the shire reeve to collect the king's taxes, enforce the laws, and to see that the ordinary affairs of government were carried out. The shires were divided into smaller sections known as hundreds. They were so named because each hundred contained one hundred families. Both the shire and the hundred were responsible within themselves for keeping order and rendering justice.

First Written Laws. One of the German kings, Ethelbert, gave strength and some uniformity to the customs and laws of his people by ordering them to be written. There were not too many of them--approximately 90 statements. A few dealt with property claims but the majority of the laws dealt with the punishment of someone injuring or wronging another. Penalties for these wrongdoings did not include imprisonment. Jails were merely a place in which to hold an accused person until the trial. The guilty literally "paid" for their

crimes because most punishments were in the form of fines. Even murder could be atoned with a money payment. The sum was paid to the person wronged and in the case of murder the money went to the victim's family. A portion of the fine also went to the king. This was considered a fee to which the king was entitled since he was the general keeper of the public peace which the culprit had violated. Anglo-Saxon law was like the ancient law of the Babylonians in that it made distinction between social classes of people. A much higher fine had to be paid for injuring or killing a lord and a churchman than for wounding or slaying a peasant or a serf.

Some of the recorded offenses and the amounts to be paid by the offenders were as follow: for piercing a man's thigh, 30 shillings; if the leg is broken, 30 shillings; if the leg is pierced below the knee, 12 shillings; if the great toe be struck off, 20 shillings; if the second toe is struck off, 15 shillings; if one man strikes another with the fist on the nose, 3 shillings. The present day value of the shilling is approximately fifteen cents.

Determining Innocence or Guilt. Not only were the Anglo-Saxon ideas about criminal punishment quite different from ours, but their system of determining innocence or guilt also was different. When a person was charged with a crime in a hundred or shire court, there were two customary ways of testing his innocence. One method was by the oath and the other was by the ordeal. If the oath practice was used, the plaintiff (the accuser) would swear under oath that his claim was true. The defendant (the accused) would take an oath that he was unjustly charged. By our standards, no true trial was conducted. It was up to the court to decide if proof was necessary and whether the accuser or accused should give it. The person the court decided was the one that had to prove his case was also told the number of people he could use.

This may not have been as many as he needed. The people to take part in his case were not expected to give evidence. Their chief duty was to swear that the person they were supporting was telling the truth. The oaths of men of high rank were considered of more value than those of lower positions. The oath of a lord, for example, equaled the oaths of six serfs. The court then simply decided the verdict.

The other method of determining innocence or guilt was by ordeal. Hot iron and water ducking were the two most common forms of trial by ordeal. Three days prior to the ordeal, the accused went to the priest to receive the blessing of the church. During the days that followed he was to eat and drink only bread, water, herbs, and salt. The bread, water, and herbs were for nourishment; the salt was to help cleanse his blood. Each day he was to visit the church and pray and on the third day he was to give an offering.

The test by hot iron required the iron to be made red hot in a fire built in the church. The red hot iron was then carried nine steps by the accused. As quickly as he was permitted to drop the iron, his hand was bandaged and otherwise untreated for a period of three days. At the end of this time the priest examined the hand. If there was no evidence of a skin burn, God or one of His angels must have protected him. Thus, he must be innocent. If, however, his hand had so much as one blister or the smallest indication of a burn, he was guilty and the appropriate fine had to be paid.

In the ordeal of water, the accused was securely tied with a rope and thrown into a pond or stream. If the water received him and he sank, his innocence was proved. He was pulled from the water and freed; that is, if it did not take the court too long to decide if he had been truly received by the water. He could be determined to be very, very innocent, but also be very dead from drowning.

If, however, the water rejected him and he floated on its surface, he must be impure and full of guilt. Again, if the court did not take too long with its decision, the culprit was drawn out and made to pay the customary fine.

Ruled by Custom. Except for the few written statements setting down penalties for crimes, Anglo-Saxon England was ruled by custom. The laws were not made by a legislature and recorded for everyone to follow. Practices that were enforced as laws were nothing more than the customary rules of the community. People were expected to do or not do certain things simply because their fathers and forefathers had done them or not done them, whichever the case might be. Each shire, each hundred, and each manor had its own customs. Hundreds and manors could and did, however, adopt customs wholesale from other hundreds.

This way of making laws, trying and punishing offenders may seem primitive to us. The legal system that was an outgrowth of the mixture of customary laws of the Angles, Saxons and Danes is considered to have been fairly well organized and coordinated for that time. The king was head of the government and under him were the lords, who were served by tenants in exchange for protection. Justice became more and more administered by these manor lords, today often called feudal lords. Many of the lords were churchmen because over a period of time various individuals had given or willed to the church large tracts of land. Thus, religious officers were lords of countless manors.

Reforms of Norman Conqueror

It was against this backdrop that William, Duke of Normandy, France, landed his conquering army in England in 1066. The Normans introduced

to the Anglo-Saxon society a new language and different social manners. They did not, however, bring with them a set of written laws. As a matter of fact, Norman laws were not too unlike those of their Anglo-Saxon "cousins." The Normans were descendants of the Northmen, a German tribe who after making raids in France, obtained permission from the Franks to settle in their country. They called their new home Normandy and shortened the name of the tribe to Norman. They intermarried with the local Frank population and gradually adopted its religion and much of its language and customs.

Trial by Wager. William was a blood relative to the Anglo-Saxons and also claimed he was the rightful heir to the throne of England. Thus he could not afford to condemn and destroy the legal system of his conquered subjects even if he had a better system, which he did not. A few minor changes, though not an improvement, were made in some of the existing laws. One was the change of trial by the ordeal to a trial by wager. In criminal cases the accused and the accuser were forced to do battle with each other. The winner of the fight was considered to be the honest one. Old men, women, and children could not be expected to properly enter into this kind of contest so they were permitted to hire a champion to fight for them. Being a professional champion was quite profitable but very dangerous, if not fatal.

Some did not think the Norman idea of a trial by duel was any better than their practice of a trial by ordeal. Both were an appeal to God to reveal the guilty one. Since the people were permitted to keep their local customs so long as they did not become a serious threat to the king's authority, the use of hot irons or water ducking continued to be used over much of England.

Reorganization of Courts. The Norman laws may not have been any better than the English, but in other aspects of government the Normans were far superior.

These new rulers of England excelled in the skill of administration. Therefore, they were able to quickly strengthen the existing legal system by making some changes in its organization and function. They gained control of the key positions within the shires and gave tracts of land to individuals in return for services. Through these people the Normans made it possible for the laws to be administered in a new way.

One of the first changes made was the creation of a new type of court. In the Anglo-Saxon system a high official of the church presided over the court. He did not make the decision in a case. It was his duty, however, to instruct the law to those who did decide certain questions. In this way he had a great deal of influence upon the cases. William removed the church officials from these courts by establishing a court that was to try cases that were of a religious concern. For approximately 500 years the church courts tried offenses against religion, morals, marriages, and personal property of deceased persons. Cases on all other matters were held in the regular courts of that time.

It was customary law during this period of time that if members of the clergy (church officials) were accused of a crime, they usually were tried in church courts. If, however, they were convicted of a charge in one the other courts, they were not to receive the same punishment as other people for the same offense. When an accused was a clergyman, he would "plead the clergy." Since very few people other than church officials could read, the test to decide the truth of his plea was to have him read from the Bible. Regardless of the law violation his sentence was to be no more than a simple branding of the thumb.

This was a customary law and no other law was passed to stop this practice. As time passed more and more people learned to read. If charged with an

offense they took advantage of this old law. They would "plead the clergy," read a couple of saving Bible verses, receive their brands, and be on their way.

Making Charges Against the Accused. Two other important changes were brought about by William and Norman kings that ruled after him. One was the manner in which a person was accused of a wrong doing, the other was the use of a jury in a trial.

Throughout England there was much crime and many personal disputes. Individuals and their possessions were usually without protection from the criminals. This was due in part to the fact that there was no one who had the regular duty of bringing wrongdoers to trial. To correct this weakness, the Normans established the procedure of the sheriff's (earlier know as a shire reeve) receiving Pleas of the Crown twice a year. This meant that 4 men from each manor and 12 from each hundred would appear before him and the court and voluntarily accuse individuals of specific crimes. This may have been our first form of swearing out a warrant. It was considered the public duty of these people to name the persons known to have done or suspected of doing something wrong. If one of the accusers was the neighbor of the accused, more than likely he was guilty. Therefore, such a person was arrested and sent to the ordeal of water or hot iron or allowed trial by battle.

Some years later this system of accusing suspects was changed from a voluntary action to a required one. It came to be called a presenting jury. It was also the beginning of our present grand jury which hears evidence to determine whether or not a person should be tried for an offense.

Introduction of Jury System. Over a period of years the Church became concerned about the justness of the trial by ordeals. After careful study the

priests were told not to take part in these trials. To whom then could the judge turn to help find out the innocence or guilt of the accused? Since he would have a presenting jury in the court, it became a natural act for him to ask them what they thought. This was not a regular part of the legal process. The accused, therefore, must agree to his being "tried" by a number of neighbors and strangers selected from the presenting jury. No rule specified the exact number to be chosen. It was usually 12 but the judge could have drafted more or less. The cooperation of the accused was determined by asking him if he was willing to "put himself upon the country." If he refused, the judge could order him to receive a prescribed form of torture. The purpose of this was to make the prisoner agree to "put himself upon the country."

The torture inflicted upon the accused was that he was laid upon the ground and large stones were placed upon his chest. Weight was increased until he either agreed to a trial by jury or died. This may appear to be a very slow and painful way to die. It is. Yet many were willing to die under this form of torture rather than accept a jury trial. The reason for this was chiefly two-fold. One was a law that gave to the king all the property of a person convicted of a serious crime. The other reason was the fact that the jury was made up with some of the very people that had accused him. Thus a guilty verdict was almost guaranteed. By choosing this woeful way out of what seemed to be a sure conviction, the accused at least saved something for his family.

The jury did not have an easy job either. After being appointed to this position, they were then instructed to go out and find out the facts of the case. This was not the job of lawyers. The jurymen had to locate evidence

anyway they could within a certain number of days. At the conclusion of that time they returned to the judge and gave him their decision.

Another reason for not wanting to serve on a jury was the fear of that second trial. Any jury can honestly make a mistake and render a wrong verdict. If the judge suspected one of these juries of making an error in its judgment, another trial was held. This time, however, the jury was the accused. A decision against it meant a heavy fine for each member. This may not have been the best system but it must have made some pretty good detectives out of jurors.

Common Law Established. Gradually the people of England wanted to have their cases decided in a court presided over by a judge appointed by the king. These judges were highly trained and experienced men. Their decisions were logical and consistent. The unfortunates that had to go to court felt that they had a better chance of getting a fair verdict from them than from the courts ruled over by the sheriff, feudal lords, or even the Church courts. Many lived too far away to be heard by the king's judges. Neither were there enough of these courts to try all of the cases. The king solved the problem by appointing more judges and having them travel from county to county holding court. The government required these judges to record the details of every case and the decision given. These written decisions were stored in books so other judges could study them in the event they had a similar case. The king wanted all like cases to have a common judgment. In this manner justice would be equally administered throughout the country.

There was no national legislature to enact laws to govern the lives of the people. William and his successors were careful not to impose new laws upon their subjects. Each section of the country had its own set of customs

and customary laws. These factors made it impossible to have a common system of laws that applied to all of England. As a result the decisions of the king's judges were accepted as the common law for all the people. It remained the law until some future judge rendered a different judgment. This decision then became a new law. In situations where there was uncertainty about a law and no prior court case to guide a judge's decision, he used this opportunity to expand the law base. He did this by inventing a new solution or borrowing one from some other government. In 1215, Magna Carta brought the king under the law also.

It had taken many, many centuries but at last England had a legal system that had grown from folkways to customs, to customary laws to laws--laws that king and subject alike held in common.

It was with this legal heritage of a little Celt, some Roman, a big slice of German, Norman, and "English" and a smattering of other cultures that a group of early 17th century pioneers boarded the *Godspeed*, *Susan Constant*, *Discovery* and the *Mayflower* and sailed for a wild and unsettled land called America.

ESTABLISHING LAW IN THE UNITED STATES

English Law Carried to Virginia

Council to Rule for King and Merchants. In early May of 1607, 104 males from the *Susan Constant*, *Godspeed*, and *Discovery* landed in Virginia at a spot later to be known as Jamestown and began the foundation of the first permanent English settlement in America. Along with their English language, customs, and traditions, they brought the provisions of a charter granted by the king to the London Company, later named the Virginia Company. This company was owned by a group of London merchants who looked upon the colony as a business

venture. This contract between the king and the settlers guaranteed the right to "enjoy all liberties, franchises and immunities within any of our other dominions to all intents and purposes as if they had been abiding and born within this our realm of England." The charter also set forth the structure of the local government. It established as the supreme governing body a council to govern the colony according to the laws of England. Further instructions contained in the *Articles and Instructions for the Government of Virginia* forbade the council to pass laws affecting life or limb. "The Crown reserved the sole power to punish any persons who should at any time rob or spoil, by sea or land, or do any act of unjust and unlawful hostility to citizens of friendly states."

These people were assured all the protection and rights of the citizens of the homeland. The Articles, however, extended to them several reforms in the laws dealing with crime. England did not have the advantage of these reforms until many years later. In England petty larceny (theft) and associating with gypsies drew the death penalty. Virginia's law was more lenient. Another difference was that if a person was charged with a crime and refused to plead his innocence or guilt, he was to be judged guilty. The practice in England was to press to death a person remaining silent to his charges.

For approximately two years, the council regulated the local affairs of the colony based upon the few instructions given by the King. The character and habits of the men plus the hardships of beginning a settlement in a wilderness made it difficult for the council to enact and enforce its laws. Its problem was increased by the fact that for some reason vacancies on the council were not filled. At one time Captain John Smith was the only member. This condition was a chief reason for changing the structure of the government. Provisions of the new charter made it possible for the Company to appoint a

governor with almost absolute authority. The local council that had once been the supreme government was now to serve only as an advisor to the governor.

First Legal Code. Lord De La Warr, the newly appointed executive, was a powerful noble with many business and political enterprises. These activities and a fever contracted in Virginia shortened his stay in the New World. His appointment was for life; thus, he sent a deputy governor and a marshal to direct the affairs of the colony in his absence. From the time he assumed the governorship until his death in 1618 he was in Virginia only a few months.

Before he left England, he and the Virginia Company identified a series of rules and ordinances by which the colony was to be governed. Deputy Governor Thomas Gates and Marshal Thomas Dale increased the number. In 1611 the *Articles, Laws and Orders, Divine, Politique, and Martial for the Government of Virginia* was posted in the church to acquaint the local population with the penal laws for which they would be held accountable.

Since this was the first legal code in English-speaking America, it warrants an examination. The colony was managed like a military outpost. Whatever the settlers produced went to common stock; they were in turn fed and clothed from the Company's storehouse. A large section of the code, therefore, relates to the stealing of tools, idleness, killing of domestic animals belonging to the Company, and embezzlement of food by Company employees. The stealing of grapes or ears of corn was an offense punishable by death. Any soldier running away from a battle also was to be put to death.

Another feature of the code was the religious intolerance. Any person in England seeking to migrate to Virginia was required to take the Oath of Supremacy. This was a pledge to support the king as head of the Church of

England. By swearing to this oath, all Roman Catholics would be excluded from the colony. (The Pope is head of the Roman Catholic Church.)

To further safeguard against this religious invasion by Catholics and to control the morality of the colonial inhabitants, Dale's Laws, as they came to be called, specified the following: any person speaking against the Trinity would be put to death; all newly landed emigrants should speedily go to the minister and satisfy him of their religious soundness or be whipped each day until this was done; religious services were to be held daily and each must attend or lose his food rations for the first offense, a whipping for the second, and six months service in the galleys for the third violation; swearing in God's name was punishable with death. For the use of profanity, the first breach was a whipping; second, a bodkin thrust through the tongue; third, death. Disrespect for legal or canon (church) authority demanded the same atonement as the use of profanity. Other punishments mentioned were branding, cutting off ears, and tying neck and heels together. It was not unusual for the offender to lie in this position for forty-eight hours.

The first 12 years of Jamestown's history was a period of discipline and suspension of many of the protections enjoyed by other Englishmen even though they had been guaranteed by the charter. This strict regulation and check of the colonists was due in part to the big job of clearing the land, establishing a colony, and achieving the purpose for which all this was done--making a profit for those that were paying the bills. Another reason for the harsh control was directly tied to some things happening in England.

The number of those without jobs was increasing daily. As a result the crime rate was also rising at an alarming rate. Parliament passed a series of laws that in a sense made it illegal to be unemployed. Yet there were far

more people than jobs. One of the laws stated that vagabonds and beggars who were not cripple, both men and women, were to have their backs bared and whipped and sent to the parish or shire where they were born or last employed. If neither of these places could be discovered, they were usually condemned to a house of correction. The judge could force them to leave the country; to return meant the gallows. People classified as vagabonds were fortune tellers, idle persons with sound bodies, peddlers, tinkers , and college students found begging without a permit from the college.

Quite often numbers of those condemned to these houses of correction were handed over to the officers of the Virginia Company to be sent to Jamestown. Occasionally someone convicted of a more serious crime might also be sent to the colony if that person was skilled in a needed trade. Many of those who had been told to leave England also sought passage to the New World.

There was one other class of unfortunates with which the legal authorities and much of England became distressed. Streets of English towns and cities, particularly London, were filled with homeless youthful vagrants. In most cases their survival depended upon what they could steal. The government saw this horde of juveniles growing up to be an army of professional criminals. Because of their young ages they could not be dealt with under the vagabond and beggar laws. Someone suggested that they be sent to the colony in North America. The London authorities gathered up hundreds of these youngsters and turned them over to the Virginia Company for distribution in its colony.

First to solicite the Iustices of Peace generally for sendinge to this Company all such younge youthes of 15 years of age and vpward as they shall finde burthensome to the Parish wher they live w^th^ the Sume of ffive pounds in monny towards a farr greater charge w^ch^ the Company must be att for their apparrell and transportacon into Virginia wher they shalbe entertayned in good manner as servant^s^ and apprentizes vnder the Companies Teñnt^s^.

[1] to solicite y^r^ Iustices for sending of younge youthes.

To the Ri Honorable S^r^ William Cockaine kn^t^ Lord Maior of the Cittie of London and the Right Worp: y^e^ Aldermen his Brethren and y^e^ Wo^ll^: the Common Counsell of y^e^ said Citty.

The Threr Counsell and Company of Virginia assembled in their great and generall Courte the 17^th^ of Nouember i6i9 have taken into Consideracon the continuall great forwardnes of his honorable Cytty in advancinge the Plantacon of Virginia and pticularly in furnishinge outt one hundred Children this last yeare, w^ch^ by the goodnes of God ther saffly Arived, (save such as dyed in the waie) and are well pleased wee doubt not for their benefitt, ffor which yo^ur^ bountifull assistance, wee in the name of the wholl Plantacon doe yield vnto yo^u^ due and deserved thanks.

The Companies declaracon to y^e^ Lo: Maior and Courte of Aldermen.

And forasmuch as wee have now resolved to send this next Springe very large supplies for the strength and encreasinge of the Collony, styled by the name of the London Collony, And finde that the sendinge of those Children to be apprentises hath been very grateful ~~of~~ §to§ the people: Wee pray yo^r^ Lo^p^: and the rest in pursuite of yo^r^ former so pyous Accons to renew yo^r^ like favours and furnish vs againe w^th^ one hundreth more for the next springe; Our desire is that wee may have them of Twelue years olde & vpward w^th^ allowance of Three pound a peec for their Transportacon and fforty shillings a peec for their apparrell as was formerly graunted. They shall be Apprentizes the boyes till they come to 21 years of Age the Girles till the like Age or till they be marryed and afterwardes they shalbe placed as Tennant^s^ vppon the publique Land w^th^ best Condicons wher they shall have houses w^th^ Stocke of Corne & Cattle to begin w^th^, and afterward the moytie of all encrease & pfitt what soever. And soe wee leave this mocon to yo^r^ honorable and graue Consideracon.

The above information taken directly from the Court Book of the Virginia Company pictures the transporting of the children to the New World. This information was extracted from The Records of the Virginia Company of London - The Court Book, From the Manuscript in the Library of Congress - Washington Government Printing Office 1906.

First Representative Government. The population of Jamestown and surrounding area was swelled by people whose presence was not by free choice. Doubtless many looked upon their new homes as just a transfer of their place of punishment. Others perhaps thought of it as being just another community in which to practice the roguish skills they had followed in England. Some must have been disgruntled by the situation that even though they made the choice to come to the New World, the decision was a lesser of two evils.

These factors plus all the normal problems of building a civilization in a wilderness were chiefly responsible for the type of laws and government established at Jamestown. By 1619, however, the colony was beginning to flourish and the need for a military rule ceased. Virginians then were extended most of the rights of the inhabitants of the mother country. In July of that year, the new governor, acting under instructions of the Virginia Company, decreed that every hundred should elect two burgesses (freemen). These burgesses were to assemble in the church for the purpose of enacting a new set of laws to govern the people. This assembly became America's first representative government.

To accomplish the task for which they had been convened, the assembly divided into two groups. Whether by intent or not, they organized themselves into a two-house (bicameral) legislature comparable to the English Parliament. The governor and his appointed council functioned as the upper house as did the English House of Lords. Following the pattern of the House of Commons, the burgesses became the lower body. This form of legislative organization became the model of ten of the American colonies and later the Congress of the United States. In Connecticut and Rhode Island both the upper and lower houses were elected. The Pennsylvania assembly was a body of one house.

Laws Passed by New Government. Dale's Laws did not have to be considered by the Virginia legislators as they reflected upon new statutes. Yet the circumstances that had prompted these laws were perhaps still in the minds of the members of the assembly. The offenses they identified were basically the same as those cited by the earlier code. Severity of the punishment, however, was significantly scaled down. An absentee from church, for example, was fined three shillings for each nonattendance. A persistent case of swearing no longer courted death; instead, the guilty person could purchase his redemption with five shillings.

Before completing its task of determining the acceptable standard of behavior in Virginia, the assembly entered a new type of regulation in the statute book. "Excess in apparel" was strongly condemned. This legislation was prompted by the attention created by a freed servant whose apparel included a beaver hat with a band of pearls. To curb what the burgesses considered a wasteful display, it was enacted that each man of the colony was to be taxed in the church for all public contributions. The amount was in accord with the appearance of his outer clothing. If he were married, the amount would be based upon either his or his wife's mode of dress. It appears that dress codes have been with us for a long time.

Court System Created. Though the duties of the assembly were chiefly legislative, it also was to serve as a court of justice. The power with which it was endowed made it the supreme court of the colony. Two cases were brought before the burgesses shortly after the beginning of their first session. It is not believed, however, that the representatives wanted to compete with the older courts for an equal share in the administration of justice. This is apparent from the fact that they referred both cases to the governor and his

council for trial.

Until late fall of 1620 Jamestown was the only English settlement in the New World. It was only natural that here was the birthplace of the English-American code of laws, a representative legislature, and an organized system of courts. This was a remarkable achievement considering the hardships of the settlers and the fact that the colony was less than 20 years old.

The assembly sitting as a court, the Quarter Court, and the monthly court constituted our first judical system. The Quarter Court consisted of the governor and his council. It was so named because it met four times a year. Within a short time the sessions were reduced to three a year. Since the name no longer was appropriate, it was changed to General Court. The number of times it convened during a 12 months' period continued to be reduced, but it retained its name.

During the formative years no differentiation was made between the kinds of cases that could be tried by the assembly and the General Court. Both sat in judgment on criminal and noncriminal cases. In criminal matters, the one convening first after the person was charged had the case put on its calendar. Both tribunals exercised the right to hear an argument for the first time; both were empowered to hear a case that had been tried in the lower court and then appealed to a higher court. Powers and privileges of modern courts are not distributed in this manner.

Monthly courts were local tribunals and they, too, had the authority to try criminal and noncriminal charges. Cases determined in these courts were ones considered too unimportant to be judged by the burgesses or governor. Justice was not always swift in these courts because they were few in

number and not always convenient to the people. This situation was helped when the colony was divided into shires; a separate court was appointed for each. Later the name was changed from monthly court to county court.

The inhabitants of the colony considered themselves English citizens, not Virginians or even Americans. They looked upon their courts as being English courts trying English offenders or settling disputes between English subjects. Thus English common law was used as the foundation for their decisions. If a person had his case heard in every court in Virginia and was still unhappy with the verdict, he had the right to request a court in England to review the case.

Pilgrims Law

Religion Laws Force People From England. About the same time the settlers of Jamestown were electing representatives to their first legislature, another group of Englishmen were making plans to form a neighboring colony. Parliament had passed a law making it illegal to be absent from any service of the Anglican Church. This law also made it a crime to attend or take any part in any other kind of religious meeting. The people who did not believe in this church had to make a decision about their religion. They could give up their faith and do as the law required. Other choices were to leave England or to worship their creed in secret. Still another choice was to worship openly as they pleased and risk persecution or arrest.

A group of Separatists made the choice to leave England. They went to Holland because it was not very far away and it permitted freedom of religion. Their religious problem may have been solved, but they soon discovered their choice brought other kinds of problems. They had trouble

getting jobs. Life was hard even for the young members of the family. Dutch customs were being adopted by the children. It looked as if Holland and Spain were about to become involved in a religious war. The parents feared their English way of life was threatened and determined to seek another home. This time their choice was the New World.

Separatists Leave Holland for New World. Because Jamestown supported the Anglican Church, the Separatists could not join that group. Permission was obtained, however, from the Virginia Company to plant a settlement in the northern section of its territory. These arrangements having been made, a small group of English Separatists left Holland for Southampton, England. Here they were to purchase supplies, engage a ship, and be joined by fellow Separatists from London. Finally after a long delay and several disappointments, approximately 104 passengers set sail for Virginia. When the *Mayflower* arrived off the coast of Cape Cod, it had missed its designated landing area by many miles. The Pilgrims (name by which this group is known) decided to stay there and take the chance that they might not be made to move. Of the approximately 103 (one died at sea) persons on board the ship, only 35 were of the original group that left Leyden, Holland. The ones that had joined them were of the same religion but had indicated very early in the voyage they did not agree in many matters.

Mayflower Compact. The pilgrim fathers must have been worried about how conflict would be prevented in the new settlement. William Bradford, in his journal of the events of the voyage, notes that some of the London people had made "discontented and mutinous speeches" and also stated that "when they came ashore they would use their owne libertie." His writings also reflect juvenile delinquency was not invented by modern youths. He gives us several

accounts of the mischief of two London boys, John and Francis Billington. On one occasion they set fire to the *Mayflower* and almost blew it apart.

These religious immigrants originally thought the only law needed for their new settlement was the Bible. Before landing they had apparently determined it was also necessary to have a civil government. On November 11, 1620, forty-one men signed an agreement which history has named the *Mayflower Compact*. The document contains only three sentences; the second sentence, however, contains 150 words. No provisions of a government are actually outlined. That to which they agreed was to "covenant and combine our selves togeather into a civill body politick, for our better ordering and preservation" which was to "enacte, constitute, and frame...lawes, ordinances, acts, constitutions, and offices" to which they did "promise all due submission and obedience."

Pilgrims Set Trend in Government. At the beginning of the Compact and again at the end the men pledged their allegiance to the king of England. They made this pledge to place themselves within the scope of English laws. Ten years later this "civill body politick" had to determine how much of the English law could be administered in the Plymouth Colony without referral to the courts in England. The entire Billington family from time to time thrust worry and concern upon the Pilgrims. John Billington, Sr., was now accused of murdering a man.

The question was not only was he innocent or guilty but also did these people have the legal authority to try him? Evidently the seriousness of the doubt weighed heavily in the minds of the settlers. The Bradford journal notes that they went to a neighboring colony that had recently been established and asked "the advice of Mr. Winthrop and other ablest gentle-men." There was agreement. John Billington was found guilty by the colonial court and was

sentenced to die by hanging. This is our first recorded execution in English America.

As in any matter of such importance, there were some who objected to the local officials assuming this kind of authority. The affair was reported to the mother country. After investigating, the council in England that was responsible for overseeing the colonies approved what Plymouth had done. Thus, the trend was established. Each colony would assume more and more control over its local affairs so long as it did not violate the statutes and common law of England.

Rule of the Saints

Puritans Settle Massachusetts Bay. Small groups of Pilgrims followed, and other settlements were made in the vicinity of Plymouth. The area, however, did not experience a real growth in population until the founding of the Massachusetts Bay Colony. This colony was begun by a religious group called Puritans. Both the Puritans and the Separatists had belonged to the Anglican Church in England. Factions within the church became dissatisfied with its beliefs and practices. One group disliked it so much that they wanted to withdraw their membership and establish their own church. These people were the Separatists. Others were unhappy with the church but not enough to want to separate. They wanted to change or purify some of the church's policies. These people were called Puritans.

Church Dictates Law. John Cotton was perhaps the most important religious leader of the Puritans. He came to America to fulfill his dream of living in a place governed by the laws of Moses. Reverend Cotton was widely respected, and his influence upon government and law was as important as was his position

in the religious life of the community. His ideas were readily accepted and established. Some of those ideas were that the church and the state were one and the same, church membership was necessary to vote or hold office, and the making and the enforcing of the laws should be in the hands of a select few.

John Winthrop, the first governor of the Massachusetts Bay Colony, worked closely with the ministers of the church. Because of his legal and religious position, he considered himself the interpreter of the laws of God. If someone was disobedient to the office, he held it was also an offense against God. He once stated that "whatsoever sentence the magistrate gives, the judgment is the Lord's." In a system of this nature, the idea of a trial by a jury did not thrive.

Puritan leaders held the opinion that the church must set up standards of conduct as well as principles of religion. As they saw it, one of the first responsibilities of the government was to punish any departure from these principles or standards. A church committee was organized for the purpose of determining those standards and principles. It found 91 "damnable errors and heresies" being practiced in the colony. Persons guilty of these misdeeds were punished with suitable whippings, fines, and imprisonments.

Perhaps the most notorious example of Puritan law based upon primitive beliefs was the wave of witch hunting that took place in Salem. A group of bored young girls accused some people they disliked of casting a witch's spell on them. Panic seized the minds of the people. This hysteria was helped along by the sermons of Cotton Mather. A special court was appointed to look into the matter. Hundreds of people were accused, and many were led into a confession of guilt. That seemed to be the easiest and often the

only way to avoid the death sentence. If the accused confessed to practicing witchcraft and repented of the evil ways, the person was chastised and freed. Those who refused to plead guilty and have their names and their families' names dishonored were condemned and "delivered up to Satan."

When the court adjourned, nineteen persons had been hanged. One old man had been pressed to death. A small number had died from the harsh prison conditions to which they were exposed while awaiting trial. Approximately 150 persons were still in confinement.

Puritan Law Challenged. Ships bringing people from England were regularly arriving on the Massachusetts shore. Among those seeking a religious haven was a number of individuals whose beliefs differed from the established church of the colony. Officials quickly passed a law directing whipping and banishment for anyone who spoke against the Puritan teachings. Those who were of another denomination suffered unbelievable pain. The other laws enforced attendance at all Puritan colony services and taxed everyone to pay the salaries of these ministers.

Anne Hutchinson was one of those who spoke out against the colonies' ministers. She was brought to trial and charged with breaking the Fifth Commandment in that she had failed to honor her father and mother. When she questioned this, the court informed her that her father and mother were the authorities of Massachusetts Bay. Anne was ordered to leave the colony. When she asked why, the judge told her to ask no questions because the court knew why, and that was all that was necessary.

Roger Williams and Thomas Hooker, to the horror of the Massachusetts Bay authorities, preached "newe and dangerous opinions." These new and dangerous opinions were such things as: government officials did not have the authority

to enforce the religious part of the Ten Commandments; a person should be free to deal with his conscience as he thought best; slavery was wrong; indentured servants should have one day a week for rest; disputes between people should be settled by a fair and impartial third person; and that constitutions should not be fixed and permanent, but that people should have the right to change their laws as needed. Thomas Hooker also advocated that the civil offices should be filled by elections and that church membership should not be a requirement to vote.

These two men, Hooker and Williams (with Williams under a banishment sentence), left Massachusetts Bay and founded two new settlements, Rhode Island and Connecticut. When the principles of government for these two colonies were established, they contained the democratic ideas of their founders. Conecttcote's (Connecticut) *Fundamental Orders* was the first written constitution of modern democracy.

First Education Law. The harsh laws of the Puritans were responsible for many people leaving Massachusetts Bay and seeking the freedoms of their neighbors. It would be irresponsible, however, to give the idea that all the laws of Massachusetts were intended to force her inhabitants down a very narrow path of conduct. Much legislation was enacted that improved the general welfare of the colonists. For example, a law was passed that required every town of 50 families to furnish a teacher of reading and writing. Every town of 100 families had to establish a grammar school to prepare the boys for college in order that "learning may not be buried in the graves of our forefathers in church and commonwealth." This law began America's public school education.

As the church relaxed its extreme rule and other changes permitted

Massachusetts to become more liberal, it made many contributions to America's democratic legal heritage.

English Law Becomes Americanized

Circumstances Determine Law. The Atlantic seaboard was not settled in a few years. When James Oglethorpe and a small group that had been released from debtor's prison in England landed in Georgia for the purpose of founding a settlement, the Virginia colony was 125 years old. When the first settlers came, they did not begin their work with the idea of founding a new country. For whatever purpose each person came it did not include giving up English citizenship. Those that left the mother country because they were dissatisfied with her conditions came to make a new and better England. The British flag came with the settlers, and with the flag came the basic English way of life.

England, however, was thousands of miles away with little opportunity for contact. Life in the new world was hard and primitive, and the people could not call for help from England every time they had a problem. Thus things could not always be done exactly as they did them in the mother country.

Most of the people who occupied the land were English, but neither the land nor the people were alike. Some land was good for farming; some had to be used for other ways of livelihood if the inhabitants were to survive. The people had different English backgrounds and different goals they wanted to achieve. For some colonies the king had granted the people the right to settle and had given them a few instructions about their government. In other colonies he had given the land to a trading company or to one or more individuals who had the major voice in the management. There were other examples of individuals who founded their own settlements without permission

from anyone.

As a result, for more than a hundred years the American colonies had been serving as a laboratory of governmental experimentation. In the colonies and in the local areas, almost every form of ruling people was tested. Each method was a step in the process of trial, error, and correction. The authority of any one period ruled and enacted laws according to its belief as to what were the special needs or circumstances of that particular time. Selling guns or ammunition to the Indians, for example, might mean disaster to the settlers; thus it was made a death crime. In early Virginia, since food was so scarce, many of the laws dealt severely with anyone stealing it. Pork was particularly prized because many different kinds of dishes could be prepared from it, and the hogs required little care. They were permitted to run loose. To assure proper ownership they were branded on the ear. A person could quickly get the death penalty if caught pig rustling as well as being found with a pig minus the branded ear.

Law enforcement and the correction system were also victims of needs and circumstances of the time. Money was too limited to be spent on wrongdoers. In general, the colonies favored the kind of correction that was the most speedy and made the least drain on the treasury. Too, the offender was in most cases needed as a worker. A long jail sentence would deprive the family or the community of a needed laborer as well as being a burden on a struggling government. Thus, punishment was usually designed to be harsh, humiliating, and hasty.

This is not to say that colonial judges never did give long sentences. The convicted could receive a judgment of several years hard labor working for the colony or the community. In cases of burglary or robbery the guilty

was made, in addition to the awarded punishment, to return the stolen goods. If he could not return them or their value, he was forced to work as a bound servant for his victim until the claim was satisfied. Creditors also had a claim against the labor of debtors if they were without property that could be taken by the court in payment for the debts. Remember the Celts? In contrast, England was at this time extensively using the prison system.

When legal questions arose, colonial judges and lawyers studied the decisions of English judges on similar cases. In many instances those principles could be applied without change. With other cases, however, because the colonial needs and circumstances were unique, the English common law had to be modified to achieve justice. On occasion, court decisions were made where there was no English precedent. Thus there slowly emerged an American body of law based on English common law but beginning to be distinctly different and new.

Knowledge of Law Becomes Necessary. Many of the colonists had a natural interest in law. Forging a civilization from a very meager beginning stimulated a thirst for an understanding of law for some. Others were becoming prosperous planters, merchants, or small-scale industrialists. These people recognized a need to have some knowledge of law to protect their interests in their business transactions. There was yet another need for knowing at least a smattering of law. Legal counsel at public expense was not provided for those too poor to afford a lawyer. (Such a poor person is called an indigent.) Even those who were not so poor found it difficult to acquire legal aid. As a result, most colonials who appeared before a court on a criminal charge had to conduct their own defense as best they could.

Just prior to the American Revolution the general knowledge of some law

was so widespread in the colonies that a prominent English statesman remarked that everyone in the colonies who reads "endeavors to obtain some smattering in law." General Gage who had been sent to govern Massachusetts complained that "all his people were lawyers or smatters in law."

It is not surprising, therefore, that the voice of the citizenry became stronger and used a legal vocabulary as it began to express its unhappiness with the mother country. The colonies had nearly 170 years to give their own style to the development of law and to become educated in its principles. Throughout that time, however, they did not waiver in their declaration to be loyal subjects of the king and claim their rights under the common law.

During most of this period, England had been busy with major problems of her own. When some of these had been eased, she had time to look into the affairs of the colonies. Too, the English treasury was in need of rebuilding, and she thought it only natural that the colonies should help with this. To achieve this, taxes were levied and trade controls were imposed. The colonists considered some of them illegal and, therefore, protested. England passed new laws to enforce the old ones. From America the cry of "violation of rights" grew louder. Thus the conflict was begun.

Court Established Freedom of Press. One of those cries came from John Peter Zenger, a newspaper editor in New York. He had written a series of articles criticizing the royal governor. The governor charged him with seditious libel and had him arrested. Seditious libel is a written article stirring up ill will against the government. He spent ten months in jail before his case came to trial. Andrew Hamilton, one of the best known lawyers of the northern colonies, came out of retirement to handle Zenger's defense.

Hamilton departed from all English precedent and argued that if what Zenger had printed was true, he had not committed a crime. The court agreed with Hamilton's logic. Freedom of the press was made a reality by this New York court.

England Violates Legal Rights of Colonies. The colonists also objected to the use of the writs of assistance. These writs were a form of a search warrant. They did not require, however, the identification of what kind of place was to be searched or for what item(s) the search was being made. This, the people said, was a gross example of illegal search and seizure.

English soldiers stationed in the colonies were lodged in private homes. Family habits and comfort were disturbed. An offended public viewed this as a bold case of invasion of privacy.

Parliament enacted tax laws, and the colonial legislatures argued that a government cannot legally tax a people when they are not represented in the lawmaking process.

Disagreements over these and other legal issues became more heated, with an occasional display of tempers. Such was the beginning of the events in Boston on an evening of March, 1770. Some men and boys shouted insults at a group of British soldiers. This was followed with a hail of rocks, snowballs, and bricks. A riot followed in which five colonists were killed. In spite of the fact that colonists were slain in this violent engagement, there were those who preferred that the issue be settled by law. John Adams, one of the leading patriots, was one of these. He served as the defense attorney for the soldiers and won the acquittal (release) for all except two. One of these pled the clergy, was given the customary brand on the thumb and released.

Colonies Organize a Policy-Making Body. The quarrel between England and the

colonies became more intense. Virginia sent out the call for an annual congress made up of representatives from each colony. This congress would review needs and problems of the colonies and recommend common policies for their solutions. The colonies responded and on September 5, 1774, the First Continental Congress convened. The 13 English colonies of North America were organized for the first time. From that moment there was a legal body representative of the common interests of all the colonies. The Continental Congress laid the foundation of the American federal union.

One of the first actions taken by this body was the stating of their rights and grievances. In this document the Congress declared, "...the respective colonies are entitled to the common law of England." It further proclaimed that they were guaranteed by the English constitution and colonial charters the rights of life, liberty, and property; and they never had given any sovereign power the right to take these rights away without their consent.

Declaration of Independence. In April of the next year the verbal struggle for rights under the English common law became one of armed conflict. The following year the reason for fighting abruptly changed. The colonies believed the privileges and protections rightfully belonging to every person could better be obtained under a different flag. Thus they determined to seek independence and the authority to govern themselves.

The committee appointed to draft a declaration of independence asked Thomas Jefferson to do the first writing. He began it with an explanation of why they were fighting. It states their idea as to why governments are established and what the people have a right to do if a government does not carry out its responsibilities.

Following this is a list of the things done by the King which they

considered illegal and inhumane. It closes with the announcement that since their British brethren have remained deaf to the voice of justice, they declare "That these United Colonies are, and of Right ought to be, Free and Independent States."

Running through the Declaration are such phrases as: all men are created equal; inalienable rights; life, liberty, and the pursuit of happiness; trial by jury; judiciary powers; quartering of troops; laws necessary for the public good; and trade with all parts of the world.

Later Jefferson commented that he did not consider it a part of his task to invent new ideas or offer sentiment never before expressed. The Declaration lists the various ideals of democracy which had been stated in English documents. These ideals, however, became more firmly rooted in the New World. The *Declaration of Independence* is one of the cornerstones of our constitutional law. It established the principle of equality and basic human rights as the foundation of our government and legal system.

From Confederation to Federation

Confederate Government Established and Tested. Soon after declaring the war to be one for independence, the Continental Congress instructed each state to set up its own government. By the end of the Revolution all states had adopted written constitutions. All except two states, Connecticut and Rhode Island, wrote wholly new documents. At the same time the Congress had a committee busy at work drafting a plan of government for the new country.

In 1777 the Congress sent to the states for approval certain *Articles of Confederation and Perpetual Union*. These articles established a very weak union. Most of the governmental power was to be kept by the states. There

were no president and no national courts--only a congress. Decisions in the congress were made by all representatives from each state deciding how they wanted to vote and then casting one vote for that state. Laws could be passed only with the approval of nine of the states. No changes in the Articles could be made without the agreement of all states. What power was given to the national government was a big surrender. The people were afraid of a strong central government. Thus the United States once more became a laboratory for governmental experimentation--another period of trial, error, and correction. It took ten years of problems and almost political disaster for the people to realize this plan of government was not working. The new Congress had so little power it had to depend upon the local government to protect its members. On one occasion some angry Pennsylvanians marched toward the building where the Congress was meeting. The members had to flee across the state line for safety.

The survival of the English common law as the base of our law was also being tested. Many wanted to declare independence from anything and all things English. Members of the American legal profession studied the French system of coding laws. Some tried to persuade other lawyers and judges to adopt this system. English common law, however, was too firmly rooted to be cast out. Common law has survived the years. Today it is not unusual for an American lawyer to call the court's attention to an English case when he cannot find an American case that supports his point. The judge does not have to permit it but it may be persuasive and he may consider it.

Convention Called to Revise the New Government. When it was clear the government under the Articles of Confederation was not succeeding, a convention was called to revise the Articles. The meeting was to be in Philadelphia,

Pennsylvania, on the second Monday in May, 1787. Sessions were to be held in the State House, the same building where the *Declaration of Independence* was adopted. Later this building was to become known as Independence Hall.

When the scheduled date arrived only 2 delegates, a Pennsylvania and a Virginian were present. For more than 10 days the arriving delegates would meet, count the number present, decide that was not enough to hold the meeting, adjourn until the next day, and repeat the procedure. By May 25 a majority of the states were represented and the decision was made to begin the work and perhaps the other delegates would arrive later. George Washington was elected as the presiding officer and the meeting was begun. At the end of June only New Hampshire and Rhode Island were absent. New Hampshire's delegate arrived in July but Rhode Island never did send representatives. The 12 states had selected a total of 74 delegates to represent them. Only 65 made the trip and 10 of these did not attend any of the sessions. The average age of those attending was 42. George Washington (55) and Benjamin Franklin (81) kept the average from being in the thirties.

The representatives were men of wide knowledge, public experience, and importance in their own states. Many were very prosperous by the standards of that time. Thirty-nine were members or former members of Congress. Thirty-one had attended college, 2 were college presidents, and 3 were teachers in some college. Eight had been signers of the Declaration of Independence; nearly all had served the Revolutionary cause; and 8 had helped to write their states' constitutions. Seven had served their respective states as governor. Two were later to become presidents of the United States and one would serve as vice-president. Twenty-eight were at a future time to be elected to the new Congress they helped to create. Four were to be appointed

to the Supreme Court. Over two-thirds of the membership were lawyers of whom 10 had been state judges.

As this information indicates, these men represented a wide range of experiences and knowledge. They were leaders and had been very active in trying to put the national and state governments on sound bases. They had studied not only the forms of government of other countries, but also the ideas of the world's best known political authors.

Work of the Convention. It is only natural that the people would be interested in a meeting charged with the task of considering changes in their government. The delegates needed to be able to offer and to discuss suggestions openly and frankly. To do this they must be free of people trying to force their opinions upon them. The only way to achieve this was not to permit visitors at any of the sessions nor discuss the work of the convention with anyone except the members. They pledged themselves to this secrecy and posted guards at the door to assure this privacy. Windows also had to be kept closed. To be in Philadelphia on a hot summer's day and in an upstairs room with all the windows and doors closed and without benefit of an electric fan or air conditioning can be bad news. It is not surprising that the daily attendance usually did not exceed 35. There was one advantage, however, to keeping the windows closed. It did keep out some of the pesky horseflies from the nearby stable. Some of the members complained that they "drove them crazy."

Philadelphians put forth much effort to make the task of the delegates as pleasant as possible. For the evenings the citizens planned a variety of social events for those that were interested. This city was the home of Benjamin Franklin. Here he enjoyed numerous old friends with whom during

the years he had discussed many problems and questions. A few of the delegates were asked to stay close to the aged and talkative Franklin at these social affairs in the event he absent-mindedly began to talk with these friends about the convention's work. If this happened, they politely stopped him.

We are indebted to James Madison for our knowledge of the details of the convention. A person was appointed to keep a record of the sessions but his account contains little information. Fortunately, Madison took careful notes of the proceedings and at night wrote a more complete description.

As the men began to recommend revisions to the Articles, they soon realized they were doing more than revising. They were developing a new form of government. The men had different political viewpoints and represented states that had different interests and needs. Some states were primarily agricultural. Others were commercial and trading centers. These different viewpoints, interests, and needs were contained in the many plans that were presented. At times the discussions became so fiery that the convention almost disbanded.

There were many issues to be resolved but the delegates were in agreement on one point. They believed the best structure of the government was the form already used by the states. The states' government was divided into three different divisions--one division to make the laws (legislature), another to enforce the laws (executive), and the other to interpret the laws (judicial). These divisions, often called branches, were to reinforce each other and provide a check and balance system. This system would prevent any one branch from becoming too powerful. All through the summer the men worked out the many, many other details about the government. On September 17, 1787, when the work of the convention was over, only 42 of the original 55 delegates

were present. Of this number only 39 wished to sign the document.

A New Constitutional Government Established. *The Constitution of the United States* went into effect on March 4, 1789. The people now had a new government that vested the power in their hands. They were concerned, however, because the Constitution did not contain a list of rights or protections guaranteed to the individual. Most of the states' constitutions contained a Bill of Rights but these would be no protection against the more powerful national government. The new Congress quickly responded to this need and proposed 12 amendments to the Constitution. By December, 1791, the required three-fourths of the states had ratified 10 of the 12 amendments. The supreme law of the land then included a plan for the individual's protection.

The ideas contained in the Constitution were not new but reflected political ideals that had been proposed for centuries. These ideas, however, were brought together in a realistic way that was workable. The Constitution of the United States is the oldest written constitution still in use among the world's major nations. William Gladstone, one of England's most important leaders, described our Constitution as being "the most wonderful work ever struck off at one time by the brain and purpose of man."

CONSTITUTIONAL LAW

THE ROLE OF THE CONSTITUTION IN AMERICAN SOCIETY

Important Implications in Everyday Life. The United States Constitution establishes the government of the United States of America and binds 50 sovereign states into one Union. It is an agreement made between government and the people and serves as a guide under which government provides for the welfare of all citizens. The Constitution also sets forth the basic principles by which our legal system operates. The framers of the Constitution started with the idea that all powers of government reside in the people. All powers not given to the federal government through the Constitution are, therefore, reserved to the states and to the people. The document itself is found in the National Archives, Washington, D.C., protected in a glass case and guarded at all times; but, because it is a living document, it follows each citizen throughout his day to day activities.

The Constitution affects many things American people do every day. The Bill of Rights, the first 10 amendments to the Constitution, affect us when we read newspapers or watch the evening news on television. When we attend school, we are affected by court decisions that relate directly to the First and Fourteenth Amendments. When working people receive paychecks, they can expect to find part of their income withheld by the government for income taxes and social security.

Outline of Constitution. It is important for you to have an understanding of what the Constitution really is. The skeleton outline of the Constitution shown below will assist you in becoming familiar with parts of the Constitution that have a direct bearing on laws and our legal system.

A. Preamble - "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

B. Main Body of the Constitution

ARTICLE I - The Legislative branch of the government

ARTICLE II - The Executive branch of the government

ARTICLE III - The Judicial branch of the government

ARTICLE IV - Full faith and credit clause, privileges and immunities clause.

ARTICLE V - Process for adding amendments

ARTICLE VI - Supremacy clause

C. Bill of Rights Amendments One to Ten

AMENDMENT I. Freedom of religion, speech, press and assembly

AMENDMENT II. Right to keep and bear arms

AMENDMENT III. Quartering of troops

AMENDMENT IV. Right against unreasonable searches and seizures, no warrants without probable cause

AMENDMENT V. Indictment, double jeopardy, privilege against self-incrimination, due process of law, and eminent domain

AMENDMENT VI. Rights of the accused - speedy public trial, jury trial, informed of charge, confrontation, and assistance of counsel for the defense

AMENDMENT VII. Jury trial in civil suits

AMENDMENT VIII. No excessive bail, fines nor cruel and unusual punishments

AMENDMENT IX. Enumeration of rights does not deny others retained by people

AMENDMENT X. Powers not delegated to U.S. nor prohibited to states are reserved to states or people

D. Amendments Eleven to Twenty-five

AMENDMENT XI. A state may not be sued by citizen of another state or citizen of foreign country

AMENDMENT XII. Provision for election of president and vice-president

AMENDMENT XIII. No slavery or involuntary servitude except as punishment for crime

AMENDMENT XIV. Persons born or naturalized in U.S. are citizens of state where they reside - no state to abridge privileges or immunities of U.S. citizens, or deprive any person of life, liberty or property without due process of law - nor deny equal

	protection of the laws
AMENDMENT XV.	Right of U.S. citizens to vote not to be denied on account of race, color, or previous servitude
AMENDMENT XVI.	Income tax without apportionment according to census
AMENDMENT XVII.	Election of senators by direct vote of people of state
AMENDMENT XVIII.	Prohibition amendment - repealed by 21st amendment
AMENDMENT XIX.	Woman suffrage
AMENDMENT XX.	Abolished short sessions of Congress - Congress to meet each year
AMENDMENT XXI.	Repeals Eighteenth Amendment
AMENDMENT XXII.	Limits presidential term of office to two elective terms
AMENDMENT XXIII.	Presidential electors for District of Columbia
AMENDMENT XXIV.	Elimination of poll tax in federal elections
AMENDMENT XXV.	Presidential succession

Government Under the Constitution. The United States Constitution should not be confused with constitutions developed by the fifty states which serve to set up each state's governmental structure. Nothing in state constitutions can conflict with principles set forth in the federal Constitution. For example, a state cannot deprive its citizens of federal rights. In actual practice, most state constitutions are similar to our federal Constitution. State constitutions, as a general rule, contain many more detailed legal matters than are included in the federal Constitution.

The framers of the Constitution intentionally limited the powers of the federal government. The United States Government can only exercise those powers which are delegated to it by the Constitution. The Tenth Amendment, for example, states that the powers not delegated to the United States by the Constitution are reserved to the States, or to the people.

As our society has become more complex and as problems have become more national in scope, the idea of what powers the national government may exercise has greatly expanded. The expansion, however, has been based precisely on the language of the Constitution. Article I, Section 8, Paragraph 18 gives the federal legislature (Congress) power "to make all laws which shall be necessary and proper." The landmark case on this point is McCulloch v. Maryland 17 U.S. (4 Wheat.) 316 (1819). In that case the State of Maryland imposed a tax on the Bank of the United States. The bank refused to pay the tax and Maryland sued to collect. During the law suit, the State of Maryland questioned whether Congress had the power to establish a bank in the first place since the Constitution does not specifically grant that power. Supreme Court Chief Justice John Marshall responded that "the necessary and proper" clause gave Congress the power it needed. Congress is charged with the responsibility for such things as collecting taxes and supporting the military. In order to implement those powers Congress may use convenient methods as long as the methods used are necessary, useful for the purpose, and proper. The Supreme Court found that a bank is a convenient method for the government to use in conducting its business affairs.

Another basis for the expansion of federal power is the *commerce clause* found in Article I, Section 8, Paragraph 3. The Congress shall have the power "to regulate Commerce with foreign Nations, and among the several

States..." A long list of Supreme Court decisions have developed federal powers under the commerce clause. This clause was inserted into the Constitution to eliminate the intense rivalry between the states. Some states had natural advantages over other states such as excellent ports and mineral wealth. There were constant economic battles between the states. The case which originally determined the scope of the commerce clause was Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824). This is the famous steamboat case in which the State of New York granted a group of its citizens the right to run steamboats on waters within the state. People from New Jersey wanted to operate steamboats on these same waters. The court found that a right granted to only one group in the State of New York was unconstitutional under the commerce clause.

Often there is strong disagreement over what constitutes the national commerce powers and what constitutes the police powers of the states. In most cases where the two powers conflict, the Supreme Court has made decisions in favor of the federal government. Areas covered by the commerce clause have grown through the years until today our lives are regulated in many ways wherever there is commerce between states (interstate). The commerce clause may affect the business where we work, goods that we purchase, as well as the operation of such places as restaurants and motel chains throughout the country. Under the commerce clause the government has the power to construct dams or to prevent their being constructed. The government has the power to provide flood protection, regulate routes of transportation by road, rail, or air, as well as to control agricultural production and prices.

The Twenty-first Amendment, which repealed the Eighteenth Amendment, prohibits transportation of intoxicating liquor into any state in violation

of the laws of that state. This created one area of commerce in which the states are free to make regulations without being affected by the commerce clause.

As indicated above, the Constitution serves to create unity out of the fifty separate state governments. Another way this is achieved under the Constitution is by use of the *full faith and credit clause* found in Article IV, Section 1. The full faith and credit clause requires that each state respect the laws and court decisions of all other states.

The *privileges and immunities clause* in Article IV, Section 2, is a protection for citizens as they travel or move from state to state. A citizen from one state can move to another state and at all times be guaranteed protection under state law. He can buy property, work, and enjoy life, liberty, and the pursuit of happiness in the state of his choice. However, he must reside in the state for a given period of time before he can vote or hold public office.

The Bill of Rights, amendments 1 through 10, limit the powers of the federal government. The Fourteenth Amendment, on the other hand, is addressed to the States, not to the federal government. The Fourteenth Amendment, along with the Thirteenth and Fifteenth Amendments, was passed following the War Between the States to insure the political rights of black citizens. Since that time, the Fourteenth Amendment has been used for a number of wide-ranging purposes. The most important language in the Fourteenth Amendment is found in Section 1: "...nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person...equal protection of the laws." Since the Fourteenth Amendment was first adopted, the Supreme Court has instructed the states to grant to their citizens many of the rights

granted to citizens by the federal government under the Bill of Rights.

The Constitution in Action. The Constitution is the supreme law of the land as set forth in Article VI. But who determines what is legal under the Constitution? It has been said that the Constitution says what the Supreme Court says that it says. And this is true. It is the responsibility of the Supreme Court to decide issues based on the Constitution. Article III, Section 2 describes the judicial powers granted under the Constitution. The Supreme Court does not decide on any question that is not an active question. Neither will the Supreme Court render advisory opinions nor make decisions based on political questions.

The 3 branches of government, legislative, executive, and judicial were designed to be co-equal so that there developed what has come to be called "separation of powers." This separation of powers serves as a constant check and balance on the authority of the different branches of government. Whenever conflicts arise between the branches of government, it is the responsibility of the judicial branch - the Supreme Court - to determine which branch of government has the right to act. If Congress passes a law that is unconstitutional, it is the duty of the Supreme Court to say so and to strike down the law. If the President and Congress have a conflict involving power to act, it is the responsibility of the Supreme Court to determine which branch of government has the proper authority. In the case of Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803) the Supreme Court decided that one particular act passed by Congress was unconstitutional. Since that time the Supreme Court has ruled on many acts of Congress to determine if they are constitutional.

EDWARDS v. CALIFORNIA - 314 U.S. 160, 62 S.Ct. 164, 86 L.Ed. 119 (1941).

TOPIC - Action involving interstate commerce and state police power.

FACTS - Edwards was a citizen of the United States who lived in California. His wife's brother, Frank Duncan, lived in Texas where he worked with the Works Progress Administration, a relief program created by Congress at the request of President Franklin Roosevelt. Edwards went to Texas and brought his brother-in-law, Duncan, to California to live with him. Duncan was without funds and unemployed. Ten days after his arrival in California Duncan began receiving financial help from the government.

A short while later some people became dissatisfied about this man's coming from another state into California and having to be supported by the government. Those who objected were remembering that the state had a law which forbade a person from bringing another into California when that person had neither money nor a job. They brought the facts of this case into a California district court. It was decided that Edwards did break the California law by bringing Duncan into the state.

The question was appealed to a higher court and finally, the United States Supreme Court accepted the case.

QUESTION - Under our federal Constitution, does a state have a right to apply police power and prevent a person's coming into its territory with neither job nor funds?

DECISION OF COURT - No. The state court was in error. The California law concerning the entry of persons into the state was a violation of the commerce clause of the Constitution. The movement of a person from state to state comes under the control of interstate commerce which is regulated by Congress. The right to move freely from state to state is a right of national citizenship which is guaranteed by the Fourteenth Amendment to the Constitution.

HEART OF ATLANTA MOTEL, INC. v. UNITED STATES - 379 U.S. 241, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964).

TOPIC - Action involving interstate commerce and civil rights.

FACTS - The appellant owned and operated the Heart of Atlanta Motel which had 216 rooms available to traveling guests. The motel was readily accessible to several main traveled roads. The appellant had advertised his motel outside the state of Georgia through different ways, including magazines of national circulation; it maintained over 50 billboards and highway signs within the state, advertising for patronage for the motel; it accepted convention trade from outside of Georgia, and approximately 75 percent of its registered guests were from out of the state. Prior to the passage of the Civil Rights Act of 1964, the motel had followed a practice of refusing to rent rooms to Negroes, and it alleged that it intended to continue to do so. The U.S. brought suit and the court found the racially discriminatory policy violative of the Civil Rights Act. The case was appealed to the United States Supreme Court.

QUESTION - Does Congress have the constitutional power to regulate a privately owned business under the public accommodations sections of the Civil Rights Act of 1964?

DECISION OF COURT - Yes. Congress has the power to regulate interstate commerce. The Supreme Court held that Congress could apply the provisions of the Civil Rights Act of 1964 to motels serving interstate travelers. The Heart of Atlanta Motel had a legal duty to rent rooms to Negroes.

KATZENBACH v. McCLUNG - 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964).

TOPIC - Action involving interstate commerce and civil rights.

FACTS - The owner-operators of Ollie's, a Birmingham, Alabama, restaurant which discriminated against Negroes, sued in the United States District Court for the Northern District of Alabama, to prevent the Justice Department from enforcing the 1964 Civil Rights Act against them on the grounds that it was unconstitutional.

The restaurant was located on a main state highway and specialized in barbequed meats and home-made pies; its seating capacity was for 220 customers. It catered to family and white-collar trade, with a takeout service for Negroes. There were 36 employees, two-thirds of whom were Negroes.

In the 12 months preceding the passage of the Civil Rights Act of 1964, this restaurant purchased $150,000 worth of food, 46 percent of which was brought in from outside the state. A substantial part of the food had moved in interstate commerce. The restaurant had refused to serve Negroes in its dining areas since its opening in 1927 and since July 2, 1964, had operated in violation of a new civil rights act that had been passed.

The case was appealed to the United States Supreme Court.

QUESTION - Under the constitutional provisions of the commerce clause, is there a violation when restaurants, offering to serve interstate travelers, refuse to serve food to Negroes?

DECISION OF COURT - Yes. The Supreme Court held that Congress had ample basis for finding that racial discrimination at restaurants which receive from out of state a substantial portion of the food they serve violated the Civil Rights Act of 1964. Such a violation places a burden on interstate commerce.

GOMILLION v. LIGHTFOOT - 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).

TOPIC - Action involving rights under the Fourteenth Amendment.

FACTS - The Alabama State Legislature had recast the municipal boundaries of Tuskegee, Alabama, to exclude most Negroes from voting. Suit was brought by a Negro who was a resident of that city. Denial of the right to vote in city elections and dissatisfaction with the Alabama redistricting statute was the basis of the suit. The statute had gerrymandered (changed) the boundaries of the city of Tuskegee in order to exclude Negro voters. Prior to the passage of this statute, the city of Tuskegee was square in shape; the act transformed it into a strangely irregular, 28 sided figure.

QUESTION - Does a state have a constitutional right to redistrict a city's boundary in order to weigh the vote more heavily in one district than in another?

DECISION OF COURT - No. The Court found that the enforcement of the statute for changing Tuskegee's boundaries constituted a violation of the equal protection clause of the Fourteenth Amendment. Legislative gerrymandering of electoral districts for the purpose of excluding Negro voters is a violation of both the Fourteenth and Fifteenth Amendments.

TOOMER v. WITSELL - 334 U.S. 385, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948).

TOPIC - Action involving the privileges and immunities clause.

FACTS - South Carolina required a license fee of $25 for each boat used for shrimp trawling by a resident in the state's three mile maritime belt and $2500 for each boat so used by a non-resident. This fee was reduced to $150 if the non-resident had been licensed each of the three preceding years. Some of the non-resident fishermen felt this excessive fee on the part of South Carolina was unfair and put the case in the federal district court. That court decided in favor of the state.

The case was then appealed to the United States Supreme Court.

QUESTION - Under the privileges and immunities clause of the Constitution does South Carolina have the right to penalize non-residents for fishing within the maritime limits of its waters by charging them a higher fee than the fee charged to residents?

DECISION OF COURT - No. Most of the shrimp are of a migratory type, and many fishermen desire to migrate with them and catch them along the way. Many states declare state lines in the maritime waters. This is confusing and threatens to create a commercial monopoly. As such, the state statute in question violates the privileges and immunities clause of Article IV of the Constitution and the equal protection clause of the Fourteenth Amendment.

GREEN v. COUNTY SCHOOL BOARD - 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

TOPIC - Action involving school desegregation and rights under the Fourteenth Amendment.

FACTS - The school system in New Kent County, Virginia, had only two schools, each one a combined elementary and high school, and had for years maintained one school for whites and a separate one for Negro children. In recent years the school system had operated under a "freedom-of-choice" plan which allowed students to choose the school they wished to attend. During the operation of the "freedom-of-choice" plan not a single white child had chosen to attend the Negro school. A number of Negro children had enrolled in the white school, but 85 percent of the Negro children still attended the Negro school.

QUESTION - Can a school system continue to use the "freedom-of-choice" plan when the plan is not producing the results intended?

DECISION OF COURT - No. The United States Supreme Court held that the plan had not achieved the elimination of segregation. The school system was directed to integrate the two schools by other means in line with the Civil Rights Act and as protected by the equal protection clause of the Fourteenth Amendment.

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THE BILL OF RIGHTS

The Bill of Rights consist of the first 10 amendments to the United States Constitution. They follow the main body of the Constitution and were added to the original document in 1791. The Bill of Rights was designed to serve as a safeguard against federal actions, to protect the rights of individual citizens. The people who drafted the first 10 amendments were concerned about some things that they did not want the government to do to them as citizens. The first 10 amendments, more than any other part of the Constitution, has kept alive the spirit of independence of the individual. Today these rights are even more important as safeguards against interference by the government than they were in 1791.

The First Amendment. The First Amendment is made up of the four freedoms, i.e., freedom of religion, freedom of speech, freedom of press and freedom of assembly. The First Amendment protects citizens against federal laws which would interfere with the four freedoms.

Freedom of religion was a basic right that the colonists wanted to protect. Many of them had clear recollections of religious persecutions that had occurred in Europe. They were vitally concerned over continuing of religious persecutions in the United States. After the Revolutionary War, there was a host of religious groups scattered throughout the 13 new states. Many of the citizens, especially in Virginia and the Carolinas, continued to belong to the Church of England. Others belonged to Protestant churches such as Baptist, Methodist, Lutheran, Presbyterian, Congregationalists and Quakers. Each religious group wanted to be assured of the right to practice its religious beliefs without interference. Persons that were not members of any religious group wanted to have the basic right not

to practice religion, if they so chose.

In 1802 President Thomas Jefferson stated that, in his opinion, the First Amendment was intended to erect "a wall of separation between church and state." At the same time others felt that the First Amendment was only intended to prevent the government from favoring any particular religion over another. Freedom of religion was designed to safeguard the free exercise of a person's chosen form of religion. Article VI, Section 3, of the main body of the Constitution states that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

The rights of freedom of speech and press were paramount in the minds of the people after the Revolutionary War. Many of them had gone through a trying period of years during which they did not feel free to express their opinions concerning English rule. They wanted to insure that the Constitution protected their right of free expression. Democracy itself depends upon the ability of the people to express their individual opinions concerning matters of public policy. The freedoms of speech and press were necessary to guarantee the right of free expression required for a democratic society. Freedom of speech includes the following:

1. Freedom of thought and freedom to think
2. Freedom of belief
3. Freedom to speak
4. Freedom to remain silent
5. Freedom to have discussions with others
6. Freedom to advance one's own ideas

Freedom of Press includes the freedom to write, draw, picture or carve. Freedoms of speech and press do not include freedom to use speech or language that is:

1. Slanderous or libelous
2. Lewd or obscene
3. Profane
4. Designed to encourage criminal acts
5. Designed to encourage the overthrow of the government by force

The right of people to peaceably assemble and associate together is a freedom protected under the First Amendment. It is only when a group gathers for an unlawful purpose or endangers the operation of state or national government that any limitation is placed upon the freedom of assembly. The right of the people to gather together and express themselves is fundamental to our concept of liberty. Like the freedom of speech and press, the citizens considered the right of peaceable assembly to lie at the foundation of the government they desired.

WISCONSIN v. YODER - 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972).

TOPIC - Action brought concerning the right to free exercise of religion under the First Amendment.

FACTS - Members of the Amish Church declined to send their children to public schools beyond the eighth grade level. They believed that by sending their children to high school they would endanger their own salvation and that of their children. Amish beliefs required members of the community to make their living by farming or other closely related activities. The Amish felt that high schools and higher education exposed their children to "worldly" influence which conflicted with their beliefs. They felt that high schools tended to emphasize intellectual and scientific accomplishments, worldly success, and social life with other students. Amish society emphasized informal learning - through doing, a life of "goodness" rather than a life of wisdom, and community welfare rather than competition in society. Formal high school education beyond the eighth grade was therefore contrary to Amish beliefs.

The Amish did not oppose elementary education through the first eight grades because they agreed that their children must have basic skills in the "Three R's" in order to read the Bible, to be good farmers and citizens, and to be able to deal with non-Amish people when necessary.

The Amish individuals appearing in court in this case were convicted for violation of the state compulsory attendance law to age 16 and fined $5.00 each.

QUESTION - Should a group of persons be required to attend public schools when such attendance is contrary to their religious beliefs?

DECISION OF COURT - No. The United States Supreme Court found that in the case of Amish children several years of formal high school education would do little to serve their interest. It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when the goal is preparation of a child in modern society, but it is quite another thing to claim that this education would prepare a child for life in a secluded Amish community. It is a known fact that Amish religious beliefs play a vital part in their day-to-day lives. While respecting the state's compulsory school attendance law, it would prevent the free exercise of religious beliefs by the members of the Old Order Amish faith. To force Amish children to attend public schools beyond the eighth grade would violate their right to the free exercise of their religious beliefs.

MARSH v. ALABAMA - 326 U.S. 501, 66 S.Ct. 276, 90 L.Ed. 265 (1946).

TOPIC - Action brought concerning right to free exercise of religious beliefs.

FACTS - Grace Marsh, a member of Jehovah's Witness, was distributing religious literature on the streets of a company-owned town known as Chickasaw, in the outskirts of the City of Mobile, Alabama. The town of Chickasaw was owned by the Gulf Shipbuilding Corporation. Grace was warned that she could not distribute the literature without a permit and was told that no permit would be issued to her. She protested and was arrested for violation of the Alabama Code, which makes it a crime to enter or remain on the premises of another after having been warned not to do so.

QUESTION - Does a person have a right to distribute religious literature on the streets of a company-owned town?

DECISION OF COURT - Yes. The United States Supreme Court held that a state law preventing the distribution of religious literature violates the First and Fourteenth Amendments to the Constitution. An ordinary town could not have barred this activity. The fact that "a single company had legal title to all the town" does not prevent channels of communication between the inhabitants and the persons passing through.

UNITED STATES v. O'BRIEN - 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968).

TOPIC - Action involving freedom of speech under the First Amendment.

FACTS - On the morning of March 31, 1966, David Paul O'Brien and three companions burned their Selective Service cards on the steps of the South Boston Courthouse. A large crowd, including several agents of the Federal Bureau of Investigation, witnessed the event. O'Brien stated to FBI agents that he had burned his card in an attempt to influence other to adopt his antiwar beliefs. He was charged with willfully and knowingly mutilating, destroying, and burning his registration card in violation of the Universal Military Training and Service Act of 1948 and amended by Congress in 1965.

QUESTION - Does an individual have a right to burn his Selective Service Card as a means of expressing an idea?

DECISION OF COURT - No. The United States Supreme Court found that Congress may establish a system of registration for individuals designed to process them into the armed forces and may require citizens to cooperate in the registration system. When O'Brien deliberately burned his card, he willfully did so against the interest of the government. Such actions would openly encourage others to destroy their cards and would disrupt the smooth function of the Selective Service System.

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WOOD v. GEORGIA - 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962).

TOPIC - Action based on the right of free speech.

FACTS - On June 6, 1960, a judge of the Bibb Superior Court, located in Bibb County, Georgia, conducted an investigation into a situation which had arisen in the county concerning Negro bloc voting. The indications were that political candidates had paid large sums to obtain the Negro votes.

The following day Mr. Wood, elected Sheriff in Bibb County, issued a news release: "Whatever the judge's intention, the action ... ordering an investigation of 'Negro bloc voting' will be considered one of the most deplorable examples of race agitation to come out of Middle Georgia in recent years."

A month later on July 7, 1960, the sheriff was cited on two counts of contempt of court based on the above statements.

QUESTION - Does an elected official have a right to freedom of expression concerning political activities?

DECISION OF COURT - Yes. The United States Supreme Court found that he was an elected official and had the right to enter the field of political controversy. The role that elected officials play in our society makes it all the more necessary that they be allowed freely to express themselves on matters of current public importance. The examination of the statements made and the circumstances under which they were made led the Court to conclude that the statements made did not present a danger to the administration of justice.

PICKERING v. BOARD OF EDUCATION - 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968).

TOPIC - Action involving First Amendment rights of free speech.

FACTS - A few days after a proposal to increase school taxes was defeated by local voters, a public school teacher in Illinois wrote a letter to the editor of a local newspaper criticizing the way in which the board of education and the superintendent of schools had handled past proposals to raise new revenue for the schools. After the letter was published, the board of education determined that its publication was detrimental to the efficient operation and administration of the schools of the district and that the interests of the school required the teacher's dismissal. The Circuit Court of Mill County, Illinois, upheld the dismissal and the Supreme Court of Illinois went along with that decision.

The case was appealed to the Supreme Court of the United States where the defendant contended that his constitutional rights of free speech had been violated.

QUESTION - Does an employee, such as a school teacher, have the right to criticize the operation of a public school system in the press?

DECISION OF COURT - Yes. The United States Supreme Court found that, in a case such as this one in which the fact of employment is only indirectly involved in the subject matter of the public statement made by the teacher, the teacher is regarded as a member of the general public. The teacher has a right to speak on issues of public importance and this right may not be used as a basis for dismissal.

KOVACS v. COOPER - 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949).

TOPIC - Action involving free speech and a "captive audience."

FACTS - A city ordinance of Trenton, New Jersey, prohibited the playing or operating of sound amplification equipment that emitted "loud and raucous noises." Sound trucks could not so operate for advertising purposes upon the public streets, alleys of thoroughfares in the City of Trenton.

QUESTION - Does such an ordinance violate the right of freedom of speech and the freedom to communicate information to others?

DECISION OF COURT - No. Freedom of speech is guaranteed under the Constitution but there are limits to this freedom. The United States Supreme Court held that the ordinance against "loud and raucous noises" is within the control of municipal authority. The citizen has a right to not hear these loud sounds and voices if he so chooses. The need for reasonable protection of the privacy of homes or businesses from the distracting noises of vehicles equipped with sound amplifying devices justifies the ordinance.

MILLS v. **ALABAMA** - 384 U.S. 214, 86 S.Ct. 1434, 16 L.Ed.2d 484 (1966).

TOPIC - Action involving freedom of expression under the First Amendment.

FACTS - The editor of a daily newspaper was charged in an Alabama state court with having violated a statute which made it a crime to solicit any votes on election day. The charge was based on the fact that the editor published an editorial on election day urging people to vote in favor of a mayor-council form of government. After several appeals the case was reviewed by the United States Supreme Court.

QUESTION - Can a state, within the constitutional guidelines of the freedom of expression clause of the First Amendment, prevent a newspaper editorial on election day that deals with the issue to be voted upon?

DECISION OF COURT - No. Suppression of the rights of the press to praise or criticize governmental agents and to contend for or against voting for them muzzles one of the very areas the constitutional framers tried to safeguard. The Alabama statute silences the press at a time when it can be most effective.

ADDERLY v. FLORIDA - 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966).

TOPIC - Action involving freedom of expression and assembly guaranteed under the First Amendment.

FACTS - Thirty-two petitioners, students of Florida A & M University, were convicted of "trespass with a malicious and mischievous intent" upon the premises of a county jail contrary to Florida law. They had gone from the school to the jail along with many other students to demonstrate their protests against the arrest of other protesting students the day before.

The County sheriff, legal custodian of the jail and jail grounds, tried to persuade them to leave. When this failed, he notified them that they must leave or he would arrest them for trespassing; and, if they resisted, he would charge them with resisting arrest as well. Some left but others remained and they were arrested.

The case was appealed to the United States Supreme Court.

QUESTION - Did the petitioners in this case have a constitutional right under the freedom of expression clause to demonstrate on jail premises after being asked by the sheriff to leave?

DECISION OF COURT - No. For security reasons, jails are not normally open to the public. Demonstrations on jail premises are not acceptable.

EDWARDS v. SOUTH CAROLINA - 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963).

TOPIC - Action involving rights of freedom of expression and assembly.

FACTS - Late in the morning on a March day, 187 black high school and college students met at the Zion Baptist Church in Columbia, South Carolina. From there, at about noon, they walked in separate groups of about fifteen to the South Carolina State House grounds, an area of two city blocks open to the public. Their purpose was to make known to the citizens of South Carolina their feelings of dissatisfaction with the condition of their people at the time.

Already on the State House grounds when the petitioners arrived were thirty or more law enforcement officers who had heard that they were coming. At first the demonstrators were warned to be peaceful but later were asked to disperse within fifteen minutes. Instead of dispersing they began carrying placards bearing such messages as "I am Proud to be a Negro," and "Down with Segregation," and engaged in singing "The Star Spangled Banner" and other patriotic and religious songs while stamping their feet and clapping their hands.

After fifteen minutes had passed, they were arrested and marched off to jail. Upon this evidence the state trial court convicted the demonstrators of breach of the peace. The case was appealed to the United States Supreme Court.

QUESTION - Did the individuals have a constitutional right to protest and demonstrate?

DECISION OF COURT - Yes. The United States Supreme Court found in this case that there was no threat of violence. Police protection was ample. The capitol was an appropriate place to protest for change. A state does not have the right to make criminal the peaceful expression of unpopular views. The demonstrators were acting within their rights granted by the First Amendment.

WALKER v. BIRMINGHAM - 388 U.S. 307, 87 S.Ct. 1824, 18 L.Ed.2d 1210 (1967).

TOPIC - Action involving freedom of expression and assembly guaranteed under the First Amendment.

FACTS - After permit requests for demonstrations had twice been denied by Public Safety Commissioner, Eugene "Bull" Conner, in early April, petitioners proceeded with their plans in Birmingham, Alabama, for demonstrations on Easter weekend, April 12-14. On the evening of April 10 the city filed a bill in state court asking for court action against 139 individuals and two organizations to prevent further demonstrations. The bill declared that certain people had sponsored and/or participated in "sit-in," "kneel-in," and other demonstrations and unlawful picketing and that this conduct was calculated to bring breaches of the peace and threaten the safety of the city. The judge granted the injunction requested in the bill. Petitioners were served notice of this action and were enjoined from participating in further demonstrations. At least three of the petitioners participated in a march on Good Friday and at least two were involved in an Easter Sunday march at which violence occurred.

Eight Negro ministers were sentenced to five days in jail and a $50 fine for violating an order issued by an Alabama court forbidding them from engaging in street parades without a city permit.

QUESTION - Were the petitioners justified in disobeying the court's injunction without attempting to have it overturned by a higher court on the grounds that it was unconstitutional, where the court had proper legal authority to issue it?

DECISION - No. Petitioners may not disobey with impunity an injunction issued by a court with proper jurisdiction. The appropriate means to challenge the constitutionality of the injunction is to appeal it to a higher court - not to disobey it and then try to defend this disobedience by arguing that the injunction was unconstitutional.

The Second Amendment. Those who drafted the Bill of Rights, and particularly the Second Amendment, were accustomed to having a militia, a citizen army which could be called on in times of crisis. These Minutemen had served well during the Revolutionary War. The framers felt that they did not want to maintain large standing armies. To prevent the federal government from interfering with the right of citizens to bear arms in local militias, they included the Second Amendment in the Bill of Rights. The states are free to regulate the possession and use of fire arms by individuals. There have been only a few cases which have come before the courts concerning rights under the Second Amendment.

The Third Amendment. During early American history, the English required the colonists to quarter English soldiers in their homes. The colonists resented this and remembered it well. The Third Amendment was included in the Bill of Rights as a guarantee that the new government would never force citizens to allow soldiers to live in their homes. Today the Third Amendment is only of historical interest. Our government, under the Constitution, has never made any attempt to quarter troops in homes of citizens.

The Fourth Amendment. "The Right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause... particularly describing the place to be searched and the person and things to be seized." The Massachusetts Constitution of 1780 contained a similar statement and the idea for the Fourth Amendment was taken directly from the Massachusetts Constitution. The Fourth Amendment protects every person against unreasonable searches of his person, home, and office as well as

against unreasonable seizure of his person, papers or other items of personal property. No search warrant shall be issued by a legal officer unless there is probable cause for suspecting illegal activity. Even then, the search warrant must particularly describe the place to be searched and the person or things to be seized.

Probable cause cannot consist of mere suspicion, however strong. It must be based upon some facts and circumstances which would justify a reasonable man to believe that an illegal act has been committed. The Fourth Amendment does not require a search warrant when the delay caused by obtaining a warrant would hinder the capture of an offender or the seizure of evidence. For example, individuals and items may be seized by officers of the law when they are in automobiles, boats, ships, airplanes, and other vehicles, which because of their mobility, could escape the law before a search warrant could be issued. Evidence obtained by illegal searches and seizures is not admissible in either federal or state criminal courts.

Under the Fourth Amendment officers of the law may legally stop an individual for an investigation if the officer believes that a crime may be or has been committed and has reasonable grounds for such belief. When a law officer detains someone for the purpose of an investigation, he may pat down or frisk the citizen to expose any concealed weapons. This "stop and frisk" action is allowed to protect the safety of the officer of the law as well as the safety of nearby citizens. When making a lawful arrest, an officer of the law may search the person arrested and may seize items of evidence found in the immediate vicinity of the arrest. Whenever an individual gives his consent to be searched or to have his property searched, no warrant is necessary. By consenting to be searched, the individual waives his rights under the Fourth Amendment.

MAPP v. OHIO - 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

TOPIC - Action involving illegal search and seizure.

FACTS - On May 23, 1957, three police officers in Cleveland, Ohio, requested admission to a home to seek a person wanted for questioning in connection with a recent bombing incident. He was reported to be hiding there. Without a search warrant, the police forced their way into the house of Miss Dollree Mapp. Once inside they found obscene materials in a trunk. This evidence was used to convict Miss Mapp.

QUESTION - Can evidence obtained in violation of the search and seizure provisions of the Fourth Amendment be used to convict a citizen of a criminal charge?

DECISION OF COURT - No. The United States Supreme Court found that the security of one's privacy stands against forceful entry of the police. The Court held that the evidence was gathered without a search warrant in violation of Miss Mapp's constitutional rights under the Fourth Amendment. This right is enforceable against the states through the due process clause of the Fourteenth Amendment. The evidence could not be used against her in a state court of law.

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WONG SUN v. UNITED STATES - 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

TOPIC - Action concerning illegal search and seizure of evidence.

FACTS - About 2:00 a.m. on the morning of June 4, 1959, federal narcotics agents in San Francisco arrested a person in possession of narcotics who never before had acted as an informer. He told federal narcotics officers that he had bought an ounce of heroin the night before from one known to him only as "Blackie Toy," proprietor of a laundry at 1733 Leavenworth Street some 30 blocks away. Without procuring an arrest warrant, the officers went to the laundry; one of them rang the bell and told James Wah Toy that he was calling for laundry and dry cleaning; but, when Toy started to close the door, the officer identified himself as a federal narcotics agent. Toy slammed the door and started running away, but the officer and his fellow officers broke open the door and arrested Toy in his bedroom. The agents uncovered several tubes containing heroin. Toy then led the agents to the living quarters of Wong Sun, who also was arrested.

QUESTION - Is evidence gained without a search warrant admissible in court?

DECISION OF COURT - No. The United States Supreme Court held that Toy's declarations in his bedroom and the narcotics found as a result of these declarations could not be used as evidence because of the unlawful entry into Toy's living quarters and the unlawful arrests which followed. The actions of the officers violated rights granted under the Fourth Amendment.

STONER v. CALIFORNIA - 376 U.S. 483, 84 S.Ct. 889, 11 L.Ed.2d 856 (1964).

TOPIC - Action involving illegal search and seizure.

FACTS - On the night of October 25, 1960, the Budget Town Food Market in Monrovia, California, was robbed by two men, one of whom was described by eyewitnesses as carrying a gun and wearing horn-rimmed glasses and a grey jacket. Soon after the robbery a checkbook belonging to Stoner was found in an adjacent parking lot and turned over to the police. Two of the stubs in the checkbook indicated that checks had been drawn to the order of the Mayfair Hotel in Pomona, California. Pursuing this lead, the officers learned from the Police Department of Pomona that Stone had a previous criminal record, and they obtained from the Pomona police a photograph of him. They showed the photograph to the two eyewitnesses to the robbery, who both stated that the picture looked like the man who had carried the gun. On the basis of this information the officers went to the Mayfair Hotel in Pomona at 10 o'clock on the night of October 27. They had neither search nor arrest warrants. There then transpired the following events as later recounted by one of the officers:

"We approached the desk, the night clerk, and asked him if there was a party by the name of Joseph Lyle Stoner living at the hotel. He checked his records and stated 'Yes, there is.' And we asked him what room he was in. He stated he was in Room 404 but he was out at this time.

"We asked him how he knew that he was out. He stated that the hotel regulations required that the key to the room would be placed in the mail box each time a guest left the hotel. The key was in the mail box and the clerk therefore knew he was out of the room.

"We asked him if he would give us permission to enter the room, explaining our reasons for this.

"Q. What reasons did you explain to the clerk?

"A. We explained that we were there to make an arrest of a man who had possibly committed a robbery in the city of Monrovia, and that we were concerned about the fact that he had a weapon. He stated 'In this case, I will be more than happy to give you permission and I will take you directly to the room.'"

The officers entered and made a thorough search of the room and its contents. They found a pair of horn-rimmed glasses and a grey jacket in the room and a .45 caliber automatic pistol with a clip and several cartridges in the bottom of a bureau drawer. The petitioner was arrested two days later in Las Vegas, Nevada. He was returned to California for trial on the charge of armed robbery. The gun, the cartridges and clip, the horn-rimmed glasses, and the grey jacket were all used as evidence against him at his trial.

QUESTION - Can a hotel clerk, under the guidelines of the Fourth Amendment's search and seizure provisions, authorize the search of a guest's room?

DECISION OF COURT - No. The United States Supreme Court found that to do so would be an invasion of constitutional rights granted under the Fourth Amendment. By engaging a hotel room, the guest, in effect, gives permission to maids, janitors, and clerks to enter his room but only in the performance of their duties.

CHIMEL v. CALIFORNIA - 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969).

TOPIC - Action involving illegal search and seizure.

FACTS - Late in the afternoon of September 13, 1965, three police officers searched the home of Ted Steven Chimel in Santa Ana, California. The officers had a warrant for his arrest for the burglary of a coin shop. The policemen did not have a search warrant. Chimel's wife admitted the officers to the house. They searched throughout the 3-bedroom house including the attic, the garage, and the small workshop. Items taken from the house were used as evidence in Chimel's trial.

QUESTION - Can the search of an entire house without a search warrant result in gaining evidence for an arrest and conviction?

DECISION OF COURT - No. The United States Supreme Court found that such a search is unreasonable and thus contrary to the Fourth Amendment. An arresting officer may search the person arrested in order to remove any weapons the prisoner might seek to use in order to escape or resist arrest. It was stated that a reasonable search of an area into which an arrestee might reach in order to grap a weapon was in order. However, it is not in order for a routine searching of rooms to be made other than the area in which an arrest occurs. Such searches may be made only under the authority of a search warrant. This is a right guaranteed under the Fourth Amendment.

KATZ v. UNITED STATES - 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

TOPIC - Action involving search and seizure right under the Fourth Amendment.

FACTS - Charles Katz was convicted in a California court of violating federal communications laws by using the telephone for sending gambling information from Los Angeles to Miami and Boston. At trial the facts were brought out that FBI agents had tapped his telephone and made a record of Katz's telephone conversations. Although Katz's lawyers objected to this tapping of a public telephone booth, the California court rejected their argument that constitutional rights under the Fourth Amendment had been violated. The case was appealed to the United States Supreme Court.

QUESTION - Is search and seizure conducted by wire tapping where no warrant had been obtained legal under the constitution?

DECISION OF COURT - No. The Fourth Amendment protects people and not "areas" from unreasonable searches and seizures. The protection granted under this amendment extends even to an area accessible to the public such as a telephone booth. Katz had a right to have private telephone conversations that were not to be recorded for use against him. The federal agents had failed to obtain a proper warrant. Wire tapping by officers of the law is legal if a warrant is obtained prior to tapping.

TERRY v. OHIO - 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

TOPIC - Action involving illegal search and seizure rights guaranteed under the Fourth Amendment.

FACTS - Officer McFadden testified that while he was patrolling in plain clothes in downtown Cleveland at approximately 2:30 in the afternoon of October 31, 1963, his attention was attracted by two men, Chilton and Terry, standing on the corner of Huron Road and Euclid Avenue. He had never seen the two men before, and he was unable to say precisely what first drew his eye to them. However, he testified that he had been a policeman for 39 years and a detective for 35 and that he had been assigned to patrol the vicinity of downtown Cleveland for shoplifters and pickpockets for 30 years. He explained that he had developed routine habits of observation over the years and that he would "stand and watch people or walk and watch people at many intervals of the day."

Officer McFadden became suspicious that the two men were "casing a job, a stick-up," and considered it his duty as a police officer to investigate further. He added that he feared they may have a gun. At one point a third man came along and engaged the two men in conversation. Officer McFadden approached the three men, identified himself as a police officer and asked for their names. When the men "mumbled something," Officer McFadden grabbed the defendant, John W. Terry, spinning him around so that they were facing the other two. McFadden patted down the outside of Terry's clothing. In the left breast pocket of Terry's overcoat McFadden felt a pistol. He removed the pistol and then patted down the other men finding another pistol on one of them. Terry was formally charged with carrying a concealed weapon. The lower court found Terry to be guilty as charged and the case was appealed to the United States Supreme Court.

QUESTION - Since the Fourth Amendment of the Federal Constitution guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, can a person be searched by an officer of the law merely because he looks and acts suspiciously?

DECISION OF COURT - Yes. The United States Supreme Court stated that an officer of the law must have some authority to conduct a reasonable search for weapons for the protection of an officer if there is reason to believe that he is dealing with an armed and dangerous individual. This stands regardless of whether he has good cause to arrest the individual for a crime.

There is no exact rule in a case of this type but each must stand upon its own facts. Where a police officer observes unusual conduct and has reason to suspect the person with whom he is dealing to be armed and dangerous, he is acting in the best interests of the law to proceed with a reasonable search to promote safety. This has come to be known as the "stop and frisk" doctrine.

The Fifth Amendment. As early as 1215 the Magna Carta stated that a man should not be tried for a serious crime unless a group of his peers, in the form of a Grand Jury, had an opportunity to hear the facts and determine whether the man should be brought to trial. Paragraph Thirty-nine of the Magna Carta stated "no free man shall be seized or imprisoned, or stripped of his rights or possession, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land." The idea of having Grand Juries was already a part of the judicial process at the time of the signing of the Declaration of Independence. It is not surprising that the Fifth Amendment to the Constitution should include the right of an individual to be brought before a Grand Jury prior to being legally charged with a serious crime.

The Fifth Amendment states that a person cannot be tried twice by the federal government for the same offense. It applies to all crimes, *felonies* or serious crimes and *misdemeanors* or lessor crimes. This is intended to prevent an individual from living in an extended period of anxiety and expense brought on by repeated appearances in court. It also avoids the likelihood that an innocent man might eventually be convicted if he is forced to defend himself time after time for the same offense. Of course, when a person is tried, convicted, but appeals his case to a higher court, the prior conviction may be set aside, and he may be tried a second time based upon the decision of the appeal court. A person may waive his right and volunteer to be tried a second time where a court grants him the privilege of retrying his case. The government reserves the right to try a citizen a second time for a

higher offense if necessary information was not available at the first trial. For example: If Joe is convicted of assault and battery against Tom but later Tom dies, Joe can then later be tried for the murder of Tom.

One of the more important rights granted under the Fifth Amendment is the privilege against self-incrimination. A person accused of a crime has a privilege not to be called as a witness against himself. A person who is called as a witness against the accused can be compelled to take the witness stand, but once on the stand, he may claim the privilege of not testifying on the ground that it may tend to incriminate him. This privilege of a witness to refuse to testify on the grounds that it may tend to incriminate him extends to every type of proceeding, criminal and civil, including investigative hearings before Congressional committees.

The Fifth Amendment prohibits the federal government from depriving any person "of life, liberty or property without due process of law." Due process of law requires that an individual be given notice that proceedings against him are to take place. He should be given an opportunity to prepare for the hearing. The hearing should proceed in a fair and impartial manner. Whenever it can be shown that due process of law was not followed by a court, the accused may be given a new trial or set free.

The federal government is prevented from "taking" property from a private individual for public use without paying the individual a fair market price for his property. Under the Fifth Amendment, the federal government cannot take private property except for a public use and must then compensate the owner for the loss of his property. This is known as the "right of eminent domain" which requires the government to pay a citizen the fair market value of his property when taken for use by the public.

GREEN v. UNITED STATES - 355 U.S. 184, 78 S.Ct. 221, 2 L.Ed.2d 199 (1957).

TOPIC - Action involving double jeopardy provision of the Fifth Amendment.

FACTS - A trial was held in the District of Columbia for Everett Green. The jury was told that they could find him guilty of either first or second degree murder. They found him guilty of murder in the second degree. Later, his conviction was reversed for lack of evidence. He was retried and convicted of murder in the first degree. The case was appealed to the United States Supreme Court.

QUESTION - Under the double jeopardy provision of the Fifth Amendment, can a person who had earlier been convicted of second degree murder be retried and given the sentence of first degree murder?

DECISION OF COURT - No. The United States Supreme Court in a 5 to 4 decision held that the second degree charge at the first trial dismissed the chances for a first degree charge later. He could not again be placed in jeopardy for the same offense.

U.S. v. WADE - 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967).

TOPIC - Action involving right against self-incrimination under the Fifth Amendment.

FACTS - Billy Joe Wade had been arrested for bank robbery in Texas and counsel had been appointed to represent him. FBI agents, without notice to the defendant's lawyer, arranged to have two bank employees observe a lineup of the accused and 5 or 6 other prisoners. Those in the lineup were required, like Wade, to wear strips of tape on their faces and to say, "Put the money in the bag." The bank employees identified Billy Joe Wade as the robber and he was convicted. The case was appealed to the Supreme Court.

QUESTION - Are an individual's constitutional rights under the Fifth Amendment violated by participation in lineups?

DECISION OF COURT - No. The United States Supreme Court found that neither compelling a defendant to present himself in lineup nor requiring him to use his voice violates his right against self-incrimination. This right protects an accused only from being compelled to testify against himself.

The Sixth Amendment. You will recall that trial by jury was brought to England by the Norman Conquerors who came in 1066. Early jurors were neighbors of the accused who appeared at court to testify as to the good or bad character of the accused. They did not actually decide the outcome of a court decision. By the time of the American Revolution, juries made final determinations concerning the outcome of trials. One of the charges made against King George III of England in the Declaration of Independence was that the colonists, in many cases, had been deprived of the benefits of a trial by jury. The Sixth Amendment to the Constitution states that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district where the crime shall have been committed,...to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him;...(and) to have the assistance of counsel for his defense." While the Sixth Amendment assures the accused the right to have a speedy public trial, the Supreme Court has determined that this actually means that the legal processes leading to trial will be orderly. In United States v. Ewell, 383 U.S. 116, 86 S.Ct. 773, 15 L.Ed.2d 627 (1966) the Supreme Court held that the passage of 17 months between arrest and hearing did not violate the speedy trial provision of the Sixth Amendment. The court also stated that so long as the delay in having trial is not purposeful on the part of the legal system, or oppressive, the defendant cannot complain.

A person charged with a criminal offense is entitled to a jury trial. A petty offense charge does not require trial by jury. An "impartial jury" is one which is made up of unprejudiced persons who would not discriminate against their fellowman because of race, creed, color or position in life.

In criminal trials the accused has the right to confront witnesses against him, to be present in the courtroom when they testify, and to cross-examine them. This right is based upon the fact that it is easier to lie about someone behind his back than it is to lie about him while looking him squarely in the face. An accused has a right to a fair trial with an impartial judge and jury.

Under the Sixth Amendment, the accused has a right to have the assistance of counsel (a lawyer) working in his behalf. If the accused is an "*indigent*" (unable to pay), he is entitled to be represented by counsel just the same as a person who is able to have a private attorney. This right to counsel is limited to criminal prosecutions. The right to having counsel begins when a person is taken into custody or otherwise deprived of his freedom in any significant way. It continues until the court makes a final determination concerning him. The right to having counsel applies also when cases are appealed to higher courts.

The Seventh Amendment. Article III, Section 2 of the Constitution provides for trial by jury in criminal cases and this was repeated in the Sixth Amendment right to trial by jury in cases involving criminal prosecution. When the Bill of Rights was being written, it was noticed that there was no provision made for jury trial in civil cases. The Seventh Amendment was included as a part of the Bill of Rights to guarantee jury trial in civil cases where the value of the controversy exceeds $20.00. This amendment applies only to trials in federal courts. It does not apply to the states and states are not required to have jury trials

in civil cases unless the State Constitution requires it. The right to jury trial as described by the Seventh Amendment is guaranteed in cases involving contracts, debts, personal injuries and injuries to property. There is no right to jury trial in suits against the government. This right to jury trial in civil cases may be waived by the parties to a controversy if they choose to do so. Federal court judges may set aside the jury's verdict when not enough facts were presented in evidence to support the conclusion reached by the jury.

GIDEON v. WAINWRIGHT - 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

TOPIC - Action involving right to counsel.

FACTS - Clarence E. Gideon was charged in Florida state court with having broken and entered the Bay Harbor Poolroom in Panama City, Florida. Under Florida law such an offense is a felony. He appeared in court without funds and without a lawyer. Gideon asked the court to appoint a lawyer to represent him. The judge stated to the accused who was trying to handle his own case, "Mr. Gideon, I am sorry, but I cannot appoint counsel to represent you in this case. Under the laws of the state of Florida, the only time the court can appoint counsel to represent a defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint counsel to defend you in this case." He was convicted and sentenced to five years in the state prison but the case was appealed to the Supreme Court on the claim that the defendant was not represented by a lawyer.

QUESTION - Must a defendant who is poor be provided counsel in a case involving minor crime?

DECISION OF COURT - Yes. The court held that, in our system of criminal justice, any person carried into court who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. So, the guarantee of counsel in the Sixth Amendment applied to all cases in the state courts under the Fourteenth Amendment, whether they be for minor crimes or serious crimes.

DOUGLAS v. CALIFORNIA - 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963).

TOPIC - Action concerning the right to counsel.

FACTS - Bennie Will Meyes and William Douglas were both tried and convicted in a California court of 13 felonies which included robbery, assault with a deadly weapon, and assault with intent to commit murder. Both were given prison terms. Defendants requested and were denied counsel after they had appealed their case. The defendants were too poor to afford an attorney. The California District Court of Appeals stated that it had reviewed the record and concluded that no good whatever could be served by appointment of counsel.

QUESTION - In order to conform to Constitutional provisions of right to counsel under the Sixth Amendment, must an attorney be appointed in order that a defendant may appeal his case if he so wishes?

DECISION OF COURT - Yes. When an appeal is decided without the benefit of counsel, then an unconstitutional line has been drawn between the poor and the rich. Such does not fulfill the requirements of the Sixth and Fourteenth Amendments.

ESCOBEDO v. ILLINOIS - 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964).

TOPIC - Action involving due process and counsel.

FACTS - On January 19, 1960, Danny Escobedo was arrested and questioned at police headquarters in Chicago concerning the fatal shooting of his brother-in-law. During the police questioning he was not allowed to talk with his attorney who was at police headquarters. The police testified that Escobedo, a 22-year-old of Mexican extraction with no record of previous experience with the police, "was handcuffed" in a standing position and that he "was nervous, he had circles under his eyes and he was upset" and was "agitated" because "he had not slept well in over a week." During the questioning Escobedo was not told of his constitutional rights to remain silent and he made some damaging statements.

QUESTION - Does an individual accused of the crime have a right to counsel prior to being questioned in detail by the police concerning a crime of which he is accused?

DECISION OF COURT - Yes. Where a police investigation is not a general inquiry into an unsolved crime but begins to focus on a particular suspect who has been taken into police custody, the suspect has a right to counsel. Here, Escobedo had not been warned by the police of his constitutional right to remain silent. The right to remain silent is guaranteed by the Fifth Amendment. Under the Sixth Amendment Escobedo was guaranteed the right to counsel.

MIRANDA v. ARIZONA - 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

TOPIC - Action concerning right to counsel under the Sixth Amendment and right against self incrimination under the Fifth Amendment.

FACTS - On March 13, 1963, Ernesto A. Miranda was arrested at his home and taken into custody to a Phoenix police station. Police took him into Interrogation Room No. 2 of the detective bureau. There he was questioned by 2 police officers. The officers admitted at trial that Miranda was not advised that he had a right to have an attorney present. Two hours later the officers emerged from the interrogation room with a written confession signed by Miranda. At the top of the statement was a typed immunity and "with full knowledge of my legal rights, understanding any statement I make may be used against me."

At his trial before a jury, the written confession was admitted into evidence over the objection of defense counsel, and the officers testified to the prior oral confession made by Miranda during the interrogation. Miranda was found guilty of kidnapping and rape. He was sentenced to 20 to 30 years imprisonment on each count, the sentences to run concurrently. On appeal, the Supreme Court of Arizona held that Miranda's constitutional rights were not violated in obtaining the confession and affirmed the conviction. In reaching its decision, the court emphasized heavily the fact that Miranda did not specifically request counsel.

QUESTION - Can statements obtained from an individual subjected to police questioning without the advice of counsel be used as evidence?

DECISION OF COURT - No. By the provisions of the Sixth Amendment, an individual held for questioning must be clearly informed that he has the right to consult counsel and to have his lawyer with him during the questioning. If he is too poor to furnish counsel, then a lawyer must be appointed to represent the accused. If he answers some questions and gives some information on his own before using his right to remain silent, then this is not to waive his right to remain silent guaranteed by the Fifth Amendment.

The Supreme Court found that from the testimony of the officers it was clear that Miranda was not aware of his right to consult with an attorney. Neither was he aware of his right not to incriminate himself. Without full knowledge of these rights the statements were inadmissible. The mere fact that he signed a statement which contained a typed-in clause stating that he had "full knowledge" of his "legal rights" does not approach the knowing and intelligent waiver required to relinquish constitutional rights.

In this landmark decision the United States Supreme Court set forth the statements that should be used by an officer of the law when arresting an individual so that there can be no doubt concerning his rights under the Fifth Amendment. The statements made by an officer

of the law must include the following:

1. The accused must be warned that he has the right to remain silent.

2. The accused must understand that any statement he does make may be used as evidence against him.

3. The accused has a right to presence of an attorney and if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires.

4. The accused may waive these rights, provided the waiver is made voluntarily, knowingly, and intelligently.

5. If the accused agrees to answer questions, he has the right to stop at any time.

ESTES v. TEXAS - 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d 543 (1965).

TOPIC - Action brought to guarantee due process of law.

FACTS - Billie Sol Estes, a much publicized financier, was indicted for swindling. On September 24 and 25, 1962, a pre-trial hearing was held to consider his motion to prohibit television, the taking of movie and still pictures, and radio broadcasting at the trial. Texas left the question of telecasting and photographing of court procedures up to the judgment of the trial judge.

On the dates in question the courtroom was jammed with reporters, photographers, and television cameramen. The room was so crowded that at least thirty people stood in the aisles. The hearings were broadcast and televised live and parts of the television tapes were later shown on the regularly scheduled evening news programs.

The trial judge ruled that television and news photography would be allowed provided the cameramen stood outside the railing that separated the trial participants from the spectators. Later, at trial four persons selected as jurors had seen or heard at least part of the telecast and broadcast. Estes was convicted of swindling and appealed his case based on the fact that the news coverage deprived him of due process of law.

QUESTION - Can due process of law be proper in an environment where there is widespread news coverage of court proceedings?

DECISION OF COURT - No. The United States Supreme Court stated that the two-day pre-trial hearing was publicized and could only have impressed those present with the notoriousness of the accused. It is true that the public has a right to be informed as to what happened in its courts, but widespread use of television, motion and still pictures, and radio broadcasting from the courtroom creates an environment that does not provide for the orderly due process of law as guaranteed by the Fifth Amendment and the right to an impartial jury as is guaranteed by the Sixth Amendment. The impact of television alone on the jurors is perhaps of the greatest importance.

SHEPPARD v. MAXWELL - 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966).

TOPIC - Action involving right to a fair trial.

FACTS - Sam Sheppard, a socially prominent doctor from the suburbs of Cleveland, Ohio, stood trial for his life amid a Roman-holiday atmosphere of news coverage. Marilyn Sheppard, his pregnant wife, had been murdered and the chief suspicion seemed to settle on Sam. The news media repeatedly stressed Sheppard's lack of cooperation, such as his refusal to take a lie detector test, and complained about the protective ring thrown up by his prominent family.

Apparently encouraged by newspaper editorials, the coroner subpoenaed Sheppard and staged a three-day inquest in a school gymnasium. The proceedings were broadcast live. Sheppard was questioned at great length. His lawyer was present but was not allowed to participate. When the lawyer attempted to place some documents in the record, he was forcibly removed from the courtroom by the coroner, much to the satisfaction of those present.

Much of the material printed or broadcast during the trial was never heard from the witness stand. Much speculation surrounded the news coverage of the trial and it came to be a big news story.

After the case was submitted to the jury, it was again subjected to many irregularities. The jury was out for five days and four nights. Although the telephones had been removed from the jurors' rooms, they were permitted to use the phones in the bailiffs' rooms to make telephone calls, placing the calls themselves, with no record kept of this action. The jury returned a verdict of murder in the second degree against the accused.

QUESTION - Has the Sixth Amendment's right to fair trial been violated when there is excessive news coverage of court proceedings?

DECISION OF COURT - Yes. The Supreme Court of the United States decided that the trial judge did not fulfill his duty to protect Sheppard from the one-sided publicity nor control disruptive influences in the courtroom. The right to a fair trial is guaranteed under the Sixth Amendment.

WILLIAMS v. FLORIDA - 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970).

TOPIC - Action claiming right to a 12-man jury trial.

FACTS - Johnny Williams was brought before a Florida court on a robbery charge. He was found guilty by a 6-man jury and sentenced to life imprisonment. The Florida District Court of Appeal affirmed the decision of the lower court. Williams appealed to the Supreme Court of the United States stating that he had a right to be tried by a 12-man jury.

QUESTION - Does a person have a right to be tried by a 12-man jury under the Sixth Amendment?

DECISION OF COURT - No. The Supreme Court stated that the Constitution does not say how many people should serve on a jury. Six is a satisfactory number. In writing its decision the Court traced the history of the size of juries. Back through the history of English law juries varied in size from 4 persons to 84. The reason that most early juries had 12 men is not found in historical records. In 1812 Lord Coke, in writing a book on the Laws of England, explained that the "number of twelve is much respected in holy writ, as 12 apostles, 12 stones, 12 tribes, etc." Was this the reason? We do not know. We do know that at sometime in the 14th century the size of the jury came to be fixed at 12 men.

In deciding this case the United States Supreme Court stated its position: "Consistent with this holding, we conclude that petitioner's Sixth Amendment rights, as applied to the states through the Fourteenth Amendment, were not violated by Florida's decision to provide a 6-man rather than a 12-man jury. The judgment of the Florida District Court of Appeal is affirmed."

BALDWIN v. NEW YORK - 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970).

TOPIC - Action to imprison an individual who committed a misdemeanor.

FACTS - Robert Baldwin was charged with the misdemeanor of jostling, which was punishable by a maximum term of imprisonment of one year.

"Jostling" occurs when a person intentionally places his hand in or near a person's pocket or handbag. A police officer saw Baldwin remove a loose package from a woman's pocketbook on a crowded escalator. Baldwin was brought to trial in the New York City Criminal Court. He requested a jury trial but was refused on the basis of Section 40 of the New York City Criminal Court Act, which stated that "all trials in the court shall be without a jury." Baldwin was found guilty and sentenced to imprisonment for one year. The New York Court of Appeals affirmed the lower court ruling.

QUESTION - Does a person, charged with a misdemeanor punishable by a one year prison term, have a right to trial by jury?

DECISION OF COURT - Yes. On appeal the United States Supreme Court reversed the decision. The Court stated that under the Sixth and Fourteenth Amendments, only "petty" offenses can be tried without a jury. No offense can be "petty" for purposes of the right to trial by jury when a sentence of more than 6 months is involved.

ILLINOIS v. ALLEN - 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970).

TOPIC - Action concerning the right of the accused to confront witnesses against him.

FACTS - The defendant, William Allen, was convicted by a jury in Illinois of armed robbery and was sentenced to serve 10 to 30 years in the Illinois State Penitentiary. The evidence against him showed that on August 12, 1956, he entered a tavern in Illinois and, after ordering a drink, took $200 from the bartender at gunpoint.

During the trial Allen used vile and abusive language in spite of repeated warnings by the judge. At one time during the court proceedings Allen remarked to the judge, "When I go out for lunchtime, you're going to be a corpse here." The trial judge answered him by saying "One more outbreak of that sort and I'll remove you from the courtroom." This warning had no effect on Allen. He continued to talk back to the judge saying, "There's not going to be no trial, either. I'm going to sit here and you're going to talk and you can bring your shackles out and straight jacket and put them on me and tape my mouth, but it will do no good because there's not going to be no trial." After more abusive remarks by Allen, the trial judge ordered the trial to proceed in Allen's absence. After conviction, Allen filed a petition in federal court charging that he had been deprived of his right under the Sixth and Fourteenth Amendments to remain present throughout his trial and confront the witnesses against him.

QUESTION - Does a defendant have a right to be present in court during his trial regardless of his conduct?

DECISION OF COURT - No. The defendant can lose this right to be present at his trial if his conduct is disruptive to trial procedure. Trial judges faced with disruptive conduct must be given the right to meet the circumstances of each case. There are proper constitutional ways for a trial judge to handle a disorderly defendant like Allen: (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly.

The Eighth Amendment. The posting of bail (money in a form of a bond) is a device used to insure the appearance of a defendant in court. A person accused of a crime may choose to remain in custody while awaiting trial or may be permitted to "post bail." The Eighth Amendment guarantees to each citizen the right that no excessive bail will be required, nor fines imposed, nor cruel punishments inflicted. The amount of bail required in any given situation is set by the judge of the court. Not every person accused of a crime is released on bail but the Eighth Amendment does require that those who are released are not charged excess amounts. Generally speaking, a person accused of a crime such as murder is not released on bail. Some of the things considered by a judge in setting the amount of bail are the nature of the crime committed, the general character and record of the accused, and his ability to pay.

When fines are imposed upon individuals, the Eighth Amendment requires that these fines not be excessive. It is left to the court to decide what fine should be imposed.

You may think that cruel and unusual punishment would not apply to our modern system of justice, but these problems are still with us today. Cruel and unusual punishment may come in the form of repeated postponement of execution dates, and the death penalty itself, as to whether it might be considered cruel and unusual punishment.

QUESTION - Would it be cruel to attempt an electrocution the second time after the first electrocution was not successful due to mechanical difficulty?

LOUISIANA EX REL. FRANCIS v. RESWEBER - 329 U.S. 459, 67 S.Ct. 374, 91 L.Ed. 422 (1947).

TOPIC - Action brought concerning cruel and unusual punishment.

FACTS - A petitioner, Willie Francis, had been sentenced by the state of Louisiana to be electrocuted. When the attempt was made, it was unsuccessful and the petitioner brought suit for his release from sentence. He sued on the grounds that under the circumstances execution would deny due process to him because of the double jeopardy provision of the Fifth Amendment and the cruel and unusual punishment provision of the Eighth Amendment.

QUESTION - Is a prisoner entitled to be released from sentence because of the failure of electrocuting equipment? Was a rescheduling for electrocution a violation of the defendant's rights under the double jeopardy provisions of the Fifth Amendment and his constitutional rights under the Eighth Amendment and the due process clause of the Fourteenth Amendment?

DECISION OF COURT - No. In a close vote the United States Supreme Court reasoned that the prisoner's constitutional rights were not violated and that he had been adequately represented by counsel within the boundaries of due process of law. They further judged that mechanical failure was no fault of anyone. They should proceed with a second attempt at electrocution.

POWELL v. STATE OF TEXAS - 392 U.S. 514, 88 S.Ct. 2145, 20 L.Ed. 2d 1254 (1968).

TOPIC - Action involving cruel punishment.

FACTS - A defendant who drank wine every day got drunk once a week and had been convicted of public intoxication about 100 times. The defendant was tried in a court in Austin, Texas, and found guilty of violating a statute which made it unlawful to be drunk in a public place. Upon appeal to a higher court he contended that he was afflicted with the disease of chronic alcoholism and could not regulate his drinking nor his appearance in public. The case was appealed to the United States Supreme Court.

QUESTION - Is a person liable for violating a statute which makes it unlawful to be drunk in a public place when he suffers from the disease of chronic alcoholism?

DECISION OF COURT - Yes. Public drunkenness has been a crime throughout our history. It was criminal in early British history. In the best interests of our society and social organization, a person must not be excused from responsibility on account of drunkenness. He may, instead, be treated for alcoholism but in order to receive this treatment he must first be removed from the streets. Being convicted for public drunkenness does not violate the cruel and unusual punishment provision of the Eighth Amendment even though the accused is a chronic alcoholic.

CARLSON v. LANDON - 342 U.S. 524, 72 S.Ct. 525, 96 L.Ed. 547 (1952).

TOPIC - Action involving bail for aliens.

FACTS - Some aliens in California requested bail while waiting to see if they would be forced to leave the country. The case was appealed to the United States Supreme Court for a ruling.

QUESTION - Do aliens have the right to the Eighth Amendment's guarantee of bail as is given our own citizens?

DECISION OF COURT - No. The attorney general's action, under the provisions of the Internal Security Act of 1950 denying bail to aliens waiting for a decision on their deportation, did not violate the Eighth Amendment. This amendment does not require the same reasonable bail for aliens under deportation charges as it gives citizens charged with bailable offenses.

TATE v. SHORT - 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971).

TOPIC - Action brought to question fines given.

FACTS - An indigent in the State of Texas accumulated fines of $425.00 on nine traffic offenses. Texas law provided that those unable to pay must be jailed for a sufficient time to satisfy their fines at the rate of $5.00 per day. This required that the indigent in this case serve an eighty-five day term.

QUESTION - Are the rights of an individual under the Eighth Amendment violated when he is forced to serve time in jail rather than pay a fine because he is an indigent?

DECISION OF COURT - Yes. The United States Supreme Court found that since the State of Texas fines individuals for traffic violations, if one cannot afford to pay the fine, he should not be imprisoned for not having the means to pay his fines. Imprisonment in such a case would be unjust. There are, however, other ways that the state can enforce payment of the fines; i.e. by allowing the indigent to make installment payments.

The Ninth Amendment. The Ninth Amendment is intended to include the fundamental rights of man not named in the first eight amendments. Exactly what these fundamental rights are has not been identified by the Supreme Court, based upon case law. However, one of these rights often referred to is the right to privacy. It has not been made clear by the Court whether property rights should be included under the Ninth Amendment.

The Tenth Amendment. The Tenth Amendment was written to emphasize that the powers not granted to the United States government are reserved to the states or to the people. However, in modern times, the federal government has become involved in activities affecting the states and the citizens to a larger extent than was ever envisioned by the framers of the Constitution or the drafters of the Bill of Rights. The increasing role of the government in providing for the general welfare of the people has tended to weaken the original intent of the Tenth Amendment.

TORTS

The word "*tort*" means wrong; injury; the opposite of right. Torts consist of any one of many legally recognized injuries or wrongs done to another person or persons. A primary purpose of primitive law was to preserve the peace and to prevent the use of force by one person against another or another's possessions and against the enjoyment of property. Tort law today is concerned with granting or denying claims of individuals against each other. The function of the law of torts is to determine who is at fault or *liable* for a wrong done. The court then instructs the wrongdoer to pay damages to the injured party for that wrong.

A tort is not the same thing as a crime although the two sometimes have many things in common. The difference between them lies in the wronged person and the remedy provided by law. A crime is an offense against the public at large for which the state will take action in the form of criminal charges. The purpose of such a proceeding is to protect the interests of the public as a whole by punishing the offender. The offender may be jailed permanently or for a limited time. Attempts may be made to reform him or teach him not to repeat the offense. A civil action for a tort, on the other hand, is brought to court by the person wronged. The purpose is to see to it that the wrongdoer pays the injured party for the damages caused.

Tort law is based on one of three grounds: (1) *intentional aggression* (2) *negligence*, and (3) *strict liability* in which there is no intentional aggression nor negligence. Intentional aggression may involve both

personal and real property or an individual either physically or mentally. Negligence consists of someone's doing an intentional act without using due care or in failing to perform an act which is required by law. Strict liability is a duty a person has when engaged in an activity that is by its very nature dangerous to others. Other torts are based upon a combination of these three types of wrongs.

Intentional Torts

Assault. In order for an intentional tort of assault to occur, a person must have intentionally and wrongfully started a force directed towards the injured party. This must have been done without the consent and against the will of the victim. As a result of the action, the victim must be placed in a frightened condition concerning his immediate bodily safety. For example, if David aims a gun at Pete and threatens to shoot him, this is an assault. It makes no difference whether the gun is loaded or unloaded. Even if the gun is unloaded and perfectly harmless, Pete is placed in a frightened condition as any reasonable person would be. Pete has every right to believe that he is in danger of bodily injury and David is liable for this act of assault.

Spoken words, looks, or gestures alone are not enough to produce an intentional tort of assault. Suppose that Dean says to Pat, "You are about to be killed." This is not an assault because there is no physical action on the part of Dean. If this statement is accompanied by the slightest movement of Dean's hand toward a weapon on the floor, this act could be an assault. An interesting exception to the rule occurs in a case in which Pat is blind. Such a statement as made above to Pat, a blind person, would be an assault.

Battery. A *battery* is similar to an assault but usually involves a harmful or offensive touching of another person without the element of fear often associated with an assault. This slight difference between assault and battery illustrates why many court cases dealing with this area of the law involve both assault and battery. Still the distinction can be made in assault cases when the individual is placed in a frightened state and in battery cases when there is an actual touching of another. If Doris taps Pam on the shoulder just to get her attention, would this constitute a battery? When several people brush up against Paul as he is leaving a baseball game, would this be a battery? Of course the answer to both questions is no. Society accepts this type of contact between individuals in the normal course of everyday living.

Suppose Jim sneaks up behind Bob and hits him on the head knocking him unconscious. Even though Bob did not see or hear Jim, a battery has been committed against Bob. On the other hand no actual bodily injury has to result from a battery situation. If Joe walks up to me and snatches a book from my hand without touching any part of my body, Joe has committed a battery. The book was so connected with my person that it was considered a part of me. In another situation Joan was about to sit down in a chair when Randy suddenly pulled the chair from under her. Joan fell to the floor and was seriously injured. Randy would be liable for all damages to Joan because he committed a battery.

Emotional Distress. Recently many courts have come to recognize the intentional causing of emotional distress or mental anguish as a tort. Such a tort involves the intentional act of frightening or distressing another individual in such a way as to cause mental anguish. Dan, just for a

practical joke, tells Paula that her brother has been in an accident and is dying in the hospital. Dan's only intention is to cause Paula worry and anxiety, but as a result Paula has a nervous breakdown. She could sue Dan for damages and probably win the case.

False Imprisonment. *False imprisonment* involves the confining of one person by another so as to prevent his freedom of movement. To be false imprisonment, the confinement must be almost total and against the will of the victim. The one confined must be conscious of the fact that he is so confined. There can be no false imprisonment if there exists a reasonably safe means of escape. If Paul is asleep in his room and Don locks the door so that Paul has no reasonably safe way to leave the room and is not conscious of the fact that he is locked in, he is not legally imprisoned. Should Don return and unlock the door before Paul tries to leave the room, Paul would never be aware of his brief period of imprisonment. The law would not recognize that he had been falsely imprisoned. The law encourages the person who is falsely imprisoned to attempt to escape; and, if he is injured while escaping, he may recover damages for his injuries.

Trespass. *Trespass* may involve either personal or real property or both. Liability for the tort of trespass to personal property is a basic protection under the law. When an individual, without an excuse, intentionally interferes with the possession and ownership of another person's personal property, the law requires return or payment to the owner of the property disturbed. For example, John has some cane poles lying beside his house. Bill, his neighbor, believes that John would not mind if he took the poles for his own use. Bill does not intend to steal but just believes that John would not mind his taking the poles. If John sues Bill, he may recoeve the poles; or, if the poles have been

damaged, John would receive payment. Bill has trespassed on John's possession of the poles. Again, Bill and John are neighbors. The limbs of John's plum tree hang over Bill's boundary line. Bill picks plums from the portion of the plum tree hanging over the boundary line. John demands that Bill return the plums. Bill insists that he has a right to have them. The law would force Bill to return the plums to John, the owner of the plum tree.

Liability for the tort of trespass to real property arises when a person enters land in possession of another and remains on the land in spite of the owner's wishes. The owner of real property has right to his own use of the surface, the ground, the air above the ground, and the soil underneath. Recently, however, the "air age" has forced a change in the law. An airplane has the legal right to fly above the land of another without it being considered trespassing. The rule is that airplanes must fly at heights high enough not to interfere with normal use of the land itself. Josh owns a small farm where he raises cattle. Every day Rufus, his neighbor, takes off repeatedly in his airplane flying low over Josh's land. The noise and vibration cause Josh's livestock to become so frightened that they stampede and their rate of growth is slowed. Josh can recover against Rufus for trespassing. Such an act is a direct invasion of Josh's land.

Don pushes Joe onto Marie's land. Who is the trespasser?

Defense of Real or Personal Property. A person has a right to defend his land and personal property by force which would not cause serious bodily injury. Before any defensive action is taken, the owner should demand that the invader stop his action. If the demand is ignored, the property owner may threaten to use greater force than would actually be necessary to discourage the intruder.

The use of deadly force or force likely to cause serious bodily injury is not justified to defend real or personal property. The only exception occurs in defense of an individual's home or dwelling when the owner fears that the invader intends to do him bodily harm.

Any action taken in defense of real or personal property must be applied at the time the property is taken or while the owner is trying to catch the thief or invader. Once the crime is completed, the owner must rely upon officers of the law to catch the villian or remove him and place the owner back in possession of his property.

Self-defense. A person is within his legal rights to defend himself under the following conditions:

1. The aggressor has acted in such a manner as to cause an individual to believe that he is about to be injured.

2. Defensive actions taken would, under the circumstances, appear reasonable to the average man.

3. There is no duty to retreat when force is threatened unless the conduct is merely careless in nature.

4. In situations where a reasonable person would anticipate that he is threatened with death or serious bodily harm, he may use the same degree of force to repel the aggressor. There is no duty to retreat under the threat of deadly force.

The privilege of self-defense does not apply in the following situations:

1. The threat of danger has passed.

2. The defensive force is in excess of what the average, reasonable man would use to defend himself.

3. There is an injury to a third person during the act of self-defense (example: Albert attacks Bill. Bill pushes Herman into the path of danger. Bill is legally responsible if Herman is injured.).

4. Self-defense does not apply when a person is properly detained or arrested by an officer of the law.

An individual may legally come to the defense of a third person. Early law granted this right only when the victim was a member of his immediate family. Today the law encourages men to give aid even to strangers who are in dangerous situations.

STATE v. INGRAM - 237 N.C. 197, 74 S.E.2d 532 (1953).

TOPIC - Action for an assault.

FACTS - Mrs. Edward Webster lived on a farm with her father, mother, two brothers and two sisters. She testified that on the morning of June 4, 1951, her father and two brothers were working in the tobacco field. About 8:45 a.m. she left home to go to the field to help them. She walked down the driveway of her home onto State Highway No. 62 to a plantation road. As she was turning onto the plantation road, she saw the defendant, Mr. Ingram, driving a 1936 Chevrolet along the highway. He was alone in the automobile and driving very slowly. Mrs. Webster testified that "he came up the road real slow and kept watching me and when he got about straight across from where I was, he had his head out of the window leering at me with a curious look." He drove on along the road until he was out of sight about 100 feet down the highway. Mrs. Webster began running through a small clump of woods and when she came to an opening she saw Ingram walking fast behind her. Having reached her relatives, she began crying from fright. As a result, she brought action against Ingram for assault.

QUESTION - Were the actions of the defendant, Mr. Ingram, sufficient to justify an assault?

DECISION OF COURT - No. In actions for assault there must be "an intentional act or attempt of an intentional act to do some immediate physical injury to another person. The display of force of violence must be such as to cause a reasonable person to fear injury." In this case, the facts and evidence do not justify a case of assault. While Mrs. Webster was frightened, that fact alone is not enough to justify an assault.

GARRATT v. DAILEY - 46 Wash.2d 197, 304 P.2d 681 (1956).

TOPIC - Damages for a battery.

FACTS - Bryan Dailey, age 5 years, 9 months, was visiting with the Garratt family in Seattle, Washington, in July, 1951. A group was sitting in the backyard of the Garratt home when Ruth Garratt, an adult suffering from arthritis, came into the backyard and slowly started to sit down in a wood and canvas lawn chair. Bryan moved the chair even though he was certain that Ruth would attempt to sit down where the chair had been. Ruth Garratt fell to the ground and fractured her hip. Ruth then sued Bryan through his father, George S. Dailey, for $11,000 in damages claiming that she suffered not only a fractured hip but other painful and serious injuries. It was claimed during the court proceeding that Bryan did not intend any harm to Ruth Garratt but simply was playing.

QUESTION - Is it necessary that an intent to harm be present to recover damages for battery when the defendant knows that his actions may result in injury to another?

DECISION OF COURT - No. While battery requires an intentional act, this does not mean that there has to be a desire to cause harm. The court found that Bryan Dailey moved the chair while Ruth Garratt was in the process of sitting down and that he had reason to know that she would fall. Bryan is therefore liable for Ruth's injuries.

MOHR v. WILLIAMS - 95 Minn. 261, 104 N.W. 12 (1905).

TOPIC - Damages for a battery.

FACTS - Dr. Williams, an ear specialist, examined Mr. Mohr and advised an operation on his right ear. Dr. Williams made a complete examination during the operation and discovered a condition of the left ear far more serious than the right. After talking with Mr. Mohr's family physician, Dr. Williams operated on the left ear. The operation was successful and beneficial to the patient. However, after the operation was over, the plaintiff, Mr. Mohr, brought action for battery.

QUESTION - Does a doctor have the right to perform an operation on his patient different from the one planned?

DECISION OF COURT - No. Unless the doctor discovers a condition endangering the life of his patient during the operation, there can be no different operation performed. Today many doctors solve this problem by requiring the patient to give total consent to any operation the physician thinks is in the best interest of the patient.

McGUIRE v. ALMY - 297 Mass. 323, 8 N.E.2d 760 (1937).

TOPIC - Damages for an assault and battery.

FACTS - In August, 1930, Dorothy B. Almy, was employed to take care of McGuire. Almy was a registered nurse and a graduate of a training school for nurses. McGuire was an insane person. Before Almy was hired, she learned that the defendant was a "mental case and was in good physical condition" and that sometimes two nurses had been taking care of her. Almy was assigned on twenty-four hour duty. She slept in the room next to McGuire. During the period of fourteen months that she had cared for McGuire, the patient had a "few odd spells." McGuire had been violent at times, breaking dishes and throwing articles about the room.

In April, 1932, McGuire had a violent attack. Nurse Almy heard a crashing of furniture and proceeded to McGuire's room to attend her. As she approached McGuire, she was struck on the head with a piece of wood held in McGuire's hand causing injuries.

QUESTION - May an insane person be held liable under the law for a battery?

DECISION OF COURT - Yes. An insane person is held liable for a tort the same way as a normal person. The law places liability on the insane person rather than on the person harmed. McGuire was liable to Almy for the injury done.

FISHER v. CARROUSEL MOTOR HOTEL, INC. - Supreme Court of Texas, 424 S.W.2d 627 (1967).

TOPIC - Damages for a battery.

FACTS - Mr. Emmit E. Fisher was a mathematician with the Data Processing Division of Manned Spacecraft Center near Houston, Texas. Fisher was invited by the Ampex Corporation to attend a one day's meeting at the Carrousel Motor Hotel, Inc. located in Houston. The invitation included a luncheon. The guests were asked to reply by telephone whether they could attend the luncheon, and Mr. Fisher called in his acceptance. After the morning meeting, the group of twenty-five or thirty guests adjourned to the Brass Ring Club for lunch. The luncheon was buffet style and Fisher stood in line with others waiting to serve their plates. As Fisher was about to be served, he was approached by an employee of the hotel, a Mr. Flynn, who snatched the plate from Fisher's hand stating that Fisher, a Negro, could not be served in the Club. Fisher testified that he was not actually touched and did not suffer fear of physical injury; but he did testify that he was highly embarrassed and hurt by Mr. Flynn's conduct in the presence of his associates. The trial jury found that Flynn was liable and awarded Fisher $400 for actual damages for his humiliation and indignity and $500 damages for Mr. Flynn's wrongful conduct. The Court of Civil Appeals found that there was no assault because there was no physical contact and no evidence of fear of physical contact. The case was again appealed to the Supreme Court of the State of Texas.

QUESTION - Has a battery been committed when there is no actual contact with a person's body but only with an object held in his hand?

DECISION OF COURT - Yes. Actual physical injury is not a requirement for a battery. The snatching of the plate from Fisher's hands was wrongful conduct amounting to a battery. The Supreme Court of Texas upheld the jury decision of the lower court.

CLAYTON v. NEW DREAMLAND ROLLER SKATING RINK, INC. - 14 N.J. Super. 390 82 A.2d 458 (1951).

TOPIC - Personal injuries arising out of a fall on defendant's premises.

FACTS - In October, 1948, plaintiff, Alice Clayton and her husband, entered the premises of New Dreamland Roller Skating Rink as paying customers for the purpose of roller skating. While skating, Mrs. Clayton fell. She claimed that the fall was caused by chewing gum on the skating rink floor. She suffered a fracture of her left arm and was taken to the first aid room of the skating rink where a Mr. Brown, an employee, attempted to set Mrs. Clayton's arm. After Mr. Brown had attempted to set the arm, he was asked whether or not he was a doctor. He replied that he was not a doctor, stating that as a prizefight manager, he had experience in such matters. A splint was applied to the broken arm by Brown.

Later Mrs. Clayton was taken to a hospital where efforts were made to reset her arm with the aid of X-ray examination. Because of damage done to her previously, bone grafts had to be performed in addition to plates and screws. Mrs. Clayton sued Brown based on her personal injuries.

QUESTION - Is there an assault and battery when an unskilled person attempts to treat an injured individual?

DECISION OF COURT - Yes. The evidence stated justifies a cause of action for assault and battery. Brown may have acted with the best of intentions to aid Mrs. Clayton, but the law holds him liable for any harm or injuries caused by his acts.

LAMB v. WOODRY - 154 Or. 30, 58 P.2d 1257 (1936).

TOPIC - Damages for assault and battery.

FACTS - On October 30, 1934, Mrs. Opal Lamb purchased a heating stove for the price of $8.50. She signed a sales contract whereby she would have the stove totally paid for by December 3 of that year. By April 8, 1935, some money due still had not been paid and the defendant, Don Woodry, went to the home of Mrs. Lamb, pushed Mrs. Lamb aside and forced her to give up possession of the stove.

QUESTION - Does the seller of goods have a right to repossess property sold if he cannot do so peacefully and without using force?

DECISION OF COURT - No. The law does not give the seller of merchandise the legal right to repossess property sold without the permission of the purchaser. In this case, Woodry used force to retake possession of the stove and if in doing so touches the resisting person, he is guilty of assault and battery. The "legal right" of the seller to repossess property sold may not be exercised without the purchaser's consent. It should be noted that the seller can take the property without consent if the buyer is not around, the main point being that he must do so peacefully.

JONES v. FISHER - 42 Wis.2d 209, 166 N.W.2d 175 (1969).

TOPIC - Assault and battery.

FACTS - The Fishers were the owners and operators of a nursing home in Middleton, Wisconsin. The plaintiff, Mrs. Jones, age 26, married but separated, started to work at the nursing home in December, 1966. She cared for the residents during the night hours, gave medication, prepared and served breakfast and performed some cleaning work in the kitchen. The Fishers considered Mrs. Jones to be a good employee and were fond of her.

In September, 1967, Mrs. Jones was told by her dentist that she needed an upper plate. The Fishers volunteered to lend Mrs. Jones $200 to apply on her dental expenses. Shortly after she obtained the upper plate, she quit working for the Fishers. About a week after she quit she returned to the nursing home to get her check in the amount of $48.00 for her last week's work. Mrs. Fisher tried to convince the plaintiff to return to work at the nursing home. Mrs. Jones refused. Mr. Fisher entered the conversation and asked when Mrs. Jones was going to pay the $200. She told him he could take $20.00 out of the $48.00 check and that she would pay the balance at the rate of $20.00 per month. He told her that was not satisfactory and that she would have to pay the entire amount in three days or leave the upper plate at the nursing home. Mrs. Jones refused to agree to those conditions. The two parties began arguing. Mrs. Jones attempted to run from the room. Mr. Fisher seized her arms and forced them in back of her. Mrs. Fisher grabbed at her face and mouth and extracted her upper plate after which Mr. Fisher released his hold and she ran out of the house.

After leaving the nursing home, Mrs. Jones walked about a block to the drugstore where she called her employer and asked him to call his lawyer. She then walked another block to the police station and reported the incident to two police officers. One of the officers went to the Fisher nursing home, obtained the teeth, returned to the station and gave Mrs. Jones her teeth.

QUESTION - Is the taking of personal property from a person by force justified to secure the payment of a loan?

DECISION OF COURT - No. In this case, the Fishers were not legally justified, under the circumstances, in forcing Mrs. Jones to give up her personal property as security for the balance of a loan she owed them. The actions of the Fishers were sufficient to be considered an assault and battery upon the person of Mrs. Jones. They are therefore liable to Mrs. Jones for damages.

BIRD v. JONES - 7 Q.B. 742, 115 Eng. Rep. 668 (1845).

TOPIC - Damages for false imprisonment.

FACTS - Mr. Jones, the defendant, blocked off a section of a public road for use to seat spectators at a boat race. Mr. Bird, the plaintiff, came along and insisted that he had a right to walk along the road. He was stopped by Mr. Jones but he proceeded to climb over the obstruction. Two policemen, employed to keep order during the boat race, stopped Bird and told him that he could not pass that way but was free to go another way. Mr. Bird brought action for false imprisonment.

QUESTION - Is there false imprisonment when a person's freedom of movement is blocked on a public road?

DECISION OF COURT - No. There is no false imprisonment unless one's freedom of movement is totally blocked. Bird was only prevented from walking in one direction and was free to go in other directions.

DRABEK v. SABLEY - 31 Wis.2d 184, 142 N.W.2d 798 (1966).

TOPIC - False imprisonment.

FACTS - The plaintiff, Thomas Drabek, ten years old, lived with his parents just north of the village, Williams Bay, Wisconsin. In February, 1964, shortly before 6:00 p.m., he and four other boys were across the road throwing snowballs at passing cars. Dr. Nanito Sabley drove by and his car was hit by a snowball apparently thrown by one of the boys. Dr. Sabley stopped his car and the boys ran. Dr. Sabley caught Tom, holding him by the arm, took him to the car and directed him to enter it. Dr. Sabley asked and was told Tom's name but did not ask where Tom lived. Dr. Sabley with Tom in his car drove into the village. He located a police officer and turned Tom over to him. Later this action was brought for false imprisonment caused by Tom being forced to enter and remain in the automobile of Dr. Sabley.

QUESTION - Was the false imprisonment of a minor by a citizen justified on the theory of self-defense?

DECISION OF COURT - No. The court noted that where a child is taken into immediate custody, his parent "shall be notified as soon as possible." In this case, Dr. Sabley's conduct was reasonable up to the time he put Tom into the car, but then the restraint of Tom's liberty was total and he was falsely imprisoned.

LONGENECKER v. ZIMMERMAN - 175 Kan. 719, 267 P.2d 543 (1954).

TOPIC - Damages for trespass.

FACTS - Two ladies, Mrs. Longenecker and Mrs. Zimmerman, owned adjoining residences and had been neighbors for about five years. In September of 1950, Mrs. Zimmerman without Mrs. Longenecker's permission, employed the Arborfield Tree Surgery Company to top and trim three cedar trees. At trial Mrs. Zimmerman stated that she was mistaken as to the boundary line and believed the trees were on her property. In fact, the trees were located some two or three feet within the boundary line of Mrs. Longenecker's property. Mrs. Longenecker considered the trees were in effect destroyed by improper pruning. She brought action against her neighbor for trespass.

QUESTION - Is a person entitled to damages for trespass in a situation where the other party did not realize that a trespass was involved?

DECISION OF COURT - Yes. In an action for trespass, the plaintiff is always entitled to damages even though he may have actually benefited by the act of the defendant. In this case, Mrs. Zimmerman trespassed when she authorized work to be done on the cedar trees belonging to Mrs. Longenecker and Mrs. Zimmerman is legally liable for damages.

PLOOF v. PUTNAM - 81 Vt. 471, 71 A. 188 (1908).

TOPIC - Damages for trespass.

FACTS - In November, 1904, the defendant, Mr. Putnam, was the owner of a small island in Lake Champlain and had a dock built on the water. The plaintiff, Mr. Ploof, was out sailing on the lake with his wife and two children when there arose a sudden and violent storm which placed the sailboat and its passengers in great danger. Upon seeing the dock of the defendant, the plaintiff headed the sailboat in that direction and moored it to the dock. A servant of the defendant, seeing that the sailboat did not belong there, untied it, whereupon the boat was driven on the shore by the storm. The sailboat was destroyed and Ploof and his wife and children received injuries.

QUESTION - Does a person have the right to enter land and make use of personal property belonging to another in times of emergency?

DECISION OF COURT - Yes. The law grants a privilege to enter land and make use of personal property belonging to another in times of emergency. There was a violent storm and Ploof was faced with a choice of docking his boat or being drowned along with his wife and children. The law grants this right to trespass for the preservation of life.

HARRISON v. WISDOM - 54 Tenn. 99, 7 Heisk 99 (1872).

TOPIC - Damages for trespass to personal property.

FACTS - The defendants, citizens in Clarksville, Tennessee, participated in the destruction of all the liquor in the town prior to the entry of the Federal army during the War Between the States. The purpose of the destruction of the liquor was to prevent the Federal troops from becoming intoxicated and doing harm to the property and citizens of the town. The plaintiff was one of the persons whose liquor was thus destroyed.

QUESTION - Where there is immediate danger, can personal property belonging to an individual be taken from him?

DECISION OF COURT - Yes. In cases such as this, where the danger is real and directly associated with the personal property involved, there is a legal right to protect the safety of the public.

STATE v. PREECE - 116 W. Va. 176, 179 S.E. 524 (1935).

TOPIC - Conviction on manslaughter charges.

FACTS - Two persons, Mr. Fine and Mr. Wolford, both drunk, were trying to find a man named Ferguson who lived with the defendant, Mr. Preece. They came to the apartment of Preece and requested entrance. Preece, not knowing them or their purpose, told them to leave. One of them started up the stairs towards Preece saying that he would kill him. Preece went into his apartment and got his gun. Fine, with one hand behind him, swung at Preece, who thinking that Fine had a gun, shot and killed Fine.

QUESTION - Is a person allowed by law to use extreme measures to protect his home and his person when threatened?

DECISION OF COURT - Yes. In this case, Preece, under the circumstances, was not required to retreat. He was in his own home and if attacked there he "was entitled to use the law of self-defense to kill another."

Negligence

Intentional torts, such as assault and battery, are based upon the idea that an aggressor intended to do harm to another individual. *Negligence*, on the other hand, is not based on intended harm but rather on the duty that each person has to act in a careful and responsible manner when others are involved. Each of us is charged by law to act with *due care* for the safety of others and their property. In legal terms the standard of due care is measured by what the average, reasonable man would do under the circumstances. In negligence cases the fact that the defendant did not intend to injure the plaintiff makes no difference.

Negligence is a new principle of tort law having been accepted for little more than one hundred years. Earlier, when people lived largely on farms in rural areas, they did not often come into day to day contact with each other. Today, as the population increases and people live closer together in city environments, we are in contact with hundreds of other people each day. In such situations the standard of due care becomes increasingly important to protect the welfare of everyone. Laws dealing with negligence indicate that we have a responsibility to apply a standard of care for the welfare of others.

In court cases dealing with negligence the main question to be decided is just how much care should have been shown by one to another in the particular situation and whether this amount of care was exercised.
It is the duty of the judge to explain to the jury what negligence is under the law. The jury considers the particular facts of the case and decides whether the defendant used as much due care as the average, reasonable man would have used if he had been in the same situation. The jury, therefore, serves as a group of average, reasonable men and women

who make a decision based on the facts presented in court. In negligence cases involving children, the test is whether the child exercised the care and caution which the average, reasonable person of his age, intelligence, and experience would have exercised under the circumstances.

Mr. Hawkins collapsed in a store from a heart attack. As he fell to the floor he pushed a lady down causing her to break a leg. Was Mr. Hawkins negligent and liable for the harm done to the lady? The answer is no. Under the circumstances, Mr. Hawkins was in no condition to show due care.

Dr. Brown performed an operation on Lee Green to remove his appendix. Lee continued to have pains and he went to another doctor who discovered a clamp had been left in Lee's side. Can Lee sue Dr. Brown for negligence? Yes. Every physician must exercise the care and skill of the average physician.

Cases dealing with negligence fill courtrooms today. One large area of negligence claims involves questions of due care concerning the ownership and use of personal and real property. Property owners are required by law to use their personal and real property with due care and concern for the rights of others.

The property owner has a responsibility, established by law, to provide a measure of due care for the safety of those that enter or use his property. People that enter upon the property of another are of three types. A *trespasser* comes onto the property of another without permission. A *licensee* comes onto the property of another with the owner's permission. A licensee may be a social guest visiting relatives. An *invitee* comes onto the property of another as an invited business guest. He may be there to conduct business directly with the owner of the property or, as a member of the

public at large, be a customer of a bank or store. An invitee has been invited onto the premises to conduct some type of activity or business.

The owner or occupier of property may use reasonable and necessary force to remove a trespasser from the premises but must not intentionally injure the trespasser. The owner is responsible to warn a licensee of any hidden dangers on the property but the law does not require him to point out visible dangers. In the case of an invitee, the owner is responsible for any dangerous conditions existing on the premises. In summary, the owner owes very little due care to a trespasser, a higher degree of due care to a licensee and the highest standard of due care to an invitee. Would a milkman be an invitee? As a landowner would you owe a higher degree of due care to the milkman or to a neighbor making a friendly visit?

KING v. SMYTHE - 140 Tenn. 217, 204 S.W. 296 (1918).

TOPIC - Damages for negligence.

FACTS - Dr. Smythe owned a car that he used in his profession and for the pleasure of his family. His son, Frank, often drove the car without asking his father's permission. In this case, the son drove the car negligently and injured a Mr. King.

QUESTION - Is the owner of a car liable for the negligence caused by a member of his family?

DECISION OF COURT - Yes. Frank Smythe was the individual who committed the negligent act but Dr. Smythe himself is liable under the law for the actions and damages caused by his son. When a car owner permits members of his household to drive the family auto for their own pleasure then the owner of the car is responsible for negligent acts of any member of his family that drives the car.

COHEN v. PETTY - 62 App. D.C. 187, 65 F.2d 820 (1933).

TOPIC - Injury caused by negligence.

FACTS - The evidence presented in court was that Joseph A. Petty, defendant, was the driver of an automobile in which Jeanette Cohen was a passenger. Seated in the front seat of the car beside Mr. Petty was Mrs. Petty. The plaintiff, Jeanette Cohen, and her sisters occupied the rear seat. The occupants of the car had known each other for a number of years. Mr. Petty was driving along between 25 and 30 m.p.h. when he approached a curve in the road. About a minute before the accident he was heard to exclaim to his wife "I feel sick," and a moment later she exclaimed in a frightened voice "Oh, what is the matter?" Immediately thereafter, the car left the road and a crash occurred. Petty had fainted. He testified in court that he had never fainted before and that so far as he knew he was in good health. Jeanette Cohen was injured in the crash and sued Petty for negligence.

QUESTION - Is a person liable for injury done to others when an unforeseeable condition causes him to lose his physical control?

DECISION OF COURT - No. If the loss of control is not foreseeable, there can be no negligence. Mr. Petty had never fainted before. It was an unavoidable accident which could not have been prevented by reasonable care.

BIERCZNSKI v. ROGERS - Sup. Ct. of Delaware, 239 A.2d 218 (1968).

TOPIC - Damages for negligent acts.

FACTS - The plaintiffs, Cecil B. Rogers and Susan D. Rogers, brought this action against Robert C. Race and Ronald Bierczнski, ages eighteen and seventeen respectively, based on negligence. Race and Bierczнski were participating in a drag race on Lore Avenue in a suburban area of Wilmington, Delaware. Both cars were moving at about 60 m.p.h. down a hill. The legal speed limit on Lore Avenue was 25 m.p.h. As the two cars raced along, the plaintiff's car came into view. Race attempted to swing his car back into the proper lane but lost control and hit Mr. Roger's car at about 70 m.p.h. The trial court awarded sizable damages to Mr. Rogers, holding both Race and Bierczнski jointly liable. Bierczнski's car did not hit Mr. Roger's car at all.

QUESTION - Is a person who participates in a drag race on a public street liable for damages not inflicted by him directly?

DECISION OF COURT - Yes. A person who participates in a drag race on a public street is liable for any accident that might occur even though he does not actually hit anyone. The reason for this rule is that it would be unfair to hold one party responsible when the race was a joint effort. Under the law a name is given to two or more people that are engaged in some illegal activity as described above. Such individuals are called joint tortfeasors. Race and Bierczнski were joint tortfeasors and were therefore jointly responsible for the accident that occurred.

LEMON v. EDWARDS - Ct. of App. of Ky., 344 S.W.2d 822 (1961).

TOPIC - Damages based on negligence.

FACTS - A gravel road runs from the main highway through the lands of Java Edwards to an area on the shores of Kentucky Lake. On an evening in July during a rain storm Mrs. Bess Lemon, plaintiff, was driving her automobile along this road. A large tree on Edward's land fell across the top of Mrs. Lemon's automobile, crushing it and causing serious injuries to her. She sued Edwards claiming that the tree had been dead for several years and that Edwards was negligent in not having it removed.

QUESTION - Does the owner of rural property have a duty to prevent trees on his property from falling into a public road?

DECISION OF COURT - No. The owner of rural property has no duty to inspect trees to determine if they might possibly fall across a road. The falling of a tree is an act of nature and the property owner has no duty to use due care in such situations. The laws are different in city and urban areas where a property owner is liable for any damage done by a tree that falls on the property of another.

DAVIES v. MANN - Exchequer 10 M. & W. 546, 152 Eng. Rep. 588 (1842).

TOPIC - Damages for negligence.

FACTS - Davies, the plaintiff, tied the front feet of his donkey together and turned him out to graze along a public highway. The donkey was eating off the side of the road when Mann came along in his wagon at a fast pace, knocked the donkey down and killed it. Davies sued Mann for the value of his donkey.

QUESTION - If one man is negligent by having his animal near the road, does this negligence prevent him from recovering damages?

DECISION OF COURT - No. Davies can recover for the value of his donkey. Davies was negligent in letting his donkey graze close to the road but Mann did not use due care to avoid hitting the donkey. The law calls this the "last clear chance." Mann had the last clear chance to avoid an accident.

WIRE v. WILLIAMS - 270 Minn. 390, 133 N.W.2d 840 (1965).

TOPIC - Personal injuries caused by negligence.

FACTS - On May 8, 1961, Diane Wire was a second grade pupil at the Wood Lake Elementary School at Richfield, Minnesota. Patricia Williams was Diane's teacher whose duty it was to supervise a second grade class in physical education. At 2:30 p.m. on that date Diane was jumping rope under the teacher's supervision as a part of the regular class instructional program. The rope being used was some six feet in length and equipped with a wooden handle on each end. Each pupil was allowed to continue jumping until the rope was stepped on by the jumper or was stopped as a result of striking the jumper's foot. At the time Diane was jumping, one handle of the rope was being held by the teacher, Patricia Williams. An accident occurred when Diane's feet came down upon the rope forcing the wooden handle from the grasp of the teacher. The handle flew toward Diane, striking one of her upper front teeth and causing other injuries. The lower court jury decision found the teacher to be not negligent. The case was appealed.

QUESTION - Is the teacher responsible for injuries received by children in the normal course of performing exercises not considered to be dangerous?

DECISION OF COURT - No. Jumping rope is not generally considered to be dangerous activity. The court found that the teacher could not have reasonably foreseen a danger that Diane would be injured.

KAVAFIAN v. SEATTLE BASEBALL CLUB ASSOCIATION - 105 Wash. 215, 177 P. 776 (1919).

TOPIC - Damages for negligence.

FACTS - Mr. Kavafian had bought a grandstand ticket for a baseball game in Seattle, Washington. When he arrived at the ballpark, there were grandstand seats available behind a screen provided to protect the spectators from stray balls. Kavafian chose to seat himself in a section that was not behind a screen. During the baseball game a fowl ball struck Kavafian and injured him. The lower court decision was that Kavafian was an invitee to the ballpark and could expect that his seat was reasonably safe.

QUESTION - Is a spectator at a baseball game who chooses to sit in an unscreened area able to recover damages for injuries?

DECISION OF COURT - No. Kavafian's action is called contributory negligence. It could be said that he is assuming the risk of sitting in an unscreened area. Kavafian had been to many baseball games previously and he knew the risk he was taking in an unscreened area. By doing so he contributed to his accident and assumed all risks connected thereto.

ZELENKO v. GIMBEL BROTHERS - Sup. Ct. of N.Y., 158 Misc. 904, 287 N.Y.S. 134 (1935).

TOPIC - Damages based on negligence.

FACTS - A shopper, Mary Zelenko, became ill while in Gimble Brothers Store in New York City. The employees of Gimbel Brothers took her to their sickroom where she was left for six hours. The employees did nothing to help her or to seek medical aid for her illness. Later she died as a result of their failure to obtain medical aid.

QUESTION - Does one who has no duty to aid another have a duty to act with care when aid is offered?

DECISION OF COURT - Yes. A person has no legal duty to come to the aid of another person but once the aid is offered there is a legal duty to act with due care. This legal principle has been criticized because in some situations it may discourage people from aiding others in distress. It is justified from the standpoint that any action taken must be with due care for the safety of one injured or ill.

KUHNS v. BRUGGER - 390 Pa. 331, 135 A.2d 395 (1957).

TOPIC - Damages for personal injuries.

FACTS - In July, 1953, a tragic and unfortunate event occurred. Albert J. Kuhns, twelve years old, was wounded by a bullet from a pistol shot by his cousin, George A. Brugger, also twelve years old, causing Kuhns serious physical injuries. The jury at the trial court level returned a verdict against defendant Brugger in the amount of $182,096.00. The bullet entered Kuhn's body and injured his spinal cord paralyzing the lower portion of his body. His condition was such that he could no longer walk. He required constant care and medication and could never be gainfully employed. Brugger, as defendant, appealed the decision of the lower court because of his age. He stated that he was incapable of negligent conduct at age twelve and therefore not liable for the injury done.

QUESTION - May a child be held liable for negligent actions?

DECISION OF COURT - Yes. A twelve year old is not judged by adult standards of care, but his conduct is expected to be as reasonable as that of a child or children of like age, mental ability and experience. The decision of the jury was upheld, finding George A. Brugger liable for his negligent conduct.

PALSGRAF v. LONG ISLAND RAILROAD COMPANY - 248 N.Y. 339, 162 N.E. 99 (1928).

TOPIC - Damages for personal injury caused by negligence.

FACTS - Mrs. Palsgraf was waiting on a train platform for a trip to Rockaway Beach. While she stood there, two men ran by to catch a train as it was pulling out. The first man jumped on board easily, but the second man had difficulty boarding the train as it moved away. He was helped by a guard on the platform. The second man was carrying a package wrapped in newspaper which fell to the ground. The package contained fireworks and exploded creating a shock so great that it knocked over some scales. The scales fell on Mrs. Palsgraf and injured her.

QUESTION - Is the railroad liable to Mrs. Palsgraf for injuries that she received?

DECISION OF COURT - No. In this case, the hazard could not have been predicted. The dropping of the package of fireworks, the resulting explosion and the tipping of the scales that injured Mrs. Palsgraf were circumstances that would have been impossible to predict. The railroad company was not negligent in these circumstances.

KING v. LENNEN - 53 Ca.2d 340, 348 P.2d 98 (1959).

TOPIC - Damages for negligence.

FACTS - Mr. Donald E. Lennen was the owner of a swimming pool located about thirty feet from a public street. The pool could be seen by young children who regularly came along the street and played around the pool. The water in the pool was three and one-half feet deep in the shallow end and nine feet at the deep end. At the time in question, the water in the pool was so dirty that its depth could not be determined by looking into it. Boyd King, one and one-half years old, lived with his parents near the Lennen property. On the day of the accident, Boyd was on Mr. Lennen's premises by invitation. Later in the day, Boyd's body was found in the bottom of the pool. His father, John Lawrence King, brought action to sue Mr. Lennen for negligence.

QUESTION - Can a landowner be held liable for a child's drowning in a swimming pool located on his property?

DECISION OF COURT - Yes. Lennen knew that children trespassed and played near his pool. The condition of the pool and the lack of adequate fencing created a serious danger. Due care on the part of the landowner would have prevented the tragedy that occurred.

SHEEHAN v. ST. PAUL & DULUTH RAILWAY COMPANY - U.S. Cir. Ct. of App., Seventh Cir. 76 F. 201 (1896).

TOPIC - Damages for negligence.

FACTS - Mr. Sheehan was walking along railroad tracks owned by St. Paul & Duluth Railway Company when his foot slipped and became stuck in the rail. A train came along and the train crew did not see Sheehan until the train was almost upon him. It was too late to stop the train from running over Sheehan's foot.

QUESTION - Does a property owner have a duty to care for a trespasser when the property owner is not aware of the presence of a trespasser?

DECISION OF COURT - No. The property owner has no duty of care to an unknown trespasser. It is only after the property owner discovers the trespass that a duty of due care arises. The train crew did not discover the trespasser in time to use due care. Once the property owner knows of the trespasser's presence, he must use reasonable care to avoid injury.

CHICAGO B & Q RAILROAD COMPANY v. KRAYENBUHL - 65 Neb. 889, 91 N.W. 880 (1902).

TOPIC - Damages caused by negligence.

FACTS - Leo Krayenbuhl, the plaintiff, age four, frequently trespassed upon the property of the Chicago B & Q Railroad Company to play on a railroad turntable that was located there. The company had a policy that the turntable should be locked at all times when not in use but this was frequently ignored by the railroad employees. On October 20, 1895, Krayenbuhl and several other children found the turntable unlocked and unguarded. As the children were playing on the turntable, Krayenbuhl's foot was cut off above the ankle. He sued the railroad company for personal injuries based on negligence of the railroad employees.

QUESTION - Does the owner of property have a duty to care for children trespassers?

DECISION OF COURT - Yes. When the owner of dangerous equipment has reason to believe that children trespass upon his property and would be naturally attracted to a piece of equipment such as a railroad turntable, the property owner is under a duty of care to protect children from the risks involved. No such special duty of care is owed to trespassers when the object attracting an individual to property is natural such as a cliff or a stream.

LAUBE v. STEVENSON - 137 Conn. 469, 78 A.2d 693 (1951).

TOPIC - Damages for negligence

FACTS - Mrs. Estelle Laube was a guest in the home of her daughter, Mrs. Albert Stevenson in the early afternoon on January 27, 1949. Mrs. Stevenson, while in the yard, asked her mother, Mrs. Laude, the plaintiff, to go down the cellar stairs to get a blanket for the baby. Mrs. Laube had used the stairs once before, about a year previously, but had no knowledge of the fact that the stairs were in a dangerous condition. The defendants, Mr. and Mrs. Stevenson, knew of the condition of the stairs but gave Mrs. Laube no warning. Mrs. Laube stumbled on the stairs due to the unsafe condition they were in and she was thrown violently to the bottom of the stairs, causing serious injuries.

QUESTION - Is a landowner liable for injury to a licensee?

DECISION OF COURT - Yes. There is a duty to warn a licensee of dangerous conditions which exist on the property which the licensee might not realize or discover. This case is an example of the general rule of law that the property owner has a duty to warn licensees of dangerous conditions that the landowner knows to exist on his property.

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L. S. AYERS & COMPANY v. HICKS - 220 Ind. 86, 40 N.E.2d 334 (1942).

TOPIC - Damages caused by negligence.

FACTS - John Hicks, a six-year-old boy, fell while shopping with his mother at Ayers Department Store and caught his fingers in the escalator. The employees of the store did not immediately stop the escalator but it kept on running and John's fingers were severely injured.

QUESTION - Does an invitor have a legal duty to rescue an invitee?

DECISION OF COURT - Yes. An invitor who is in control of equipment on the premises has a legal duty to rescue an invitee. The invitor is in control of the machinery causing harm and he has a duty to act with reasonable care to prevent further injury to an invitee.

Strict Liability

Laws dealing with strict liability are most frequently applied with respect to three types of torts: damage done by domesticated animals or wild animals under an individual's control, damage resulting from highly dangerous activities such as blasting, drilling or tearing down buildings, and injury resulting from the use of products which are recognizably dangerous to those who come into contact with them. Individuals engaged in these types of activities are strictly liable for the results of their actions, even if due care is shown, and they must take the necessary precautions to prevent harm to others.

ZAREK v. FREDERICKS - U.S. Cir. Ct. of App., Third Circuit, 138 F.2d 689 (1943).

TOPIC - Injuries caused by dog bite.

FACTS - Vincent Zarek, a minor, was bitten by a dog owned by Cicero Fredericks while at a summer resort hotel in Monroe County, Pennsylvania, where the boy and his mother were vacationing. The claim is that the boy received injuries in the amount of $4,000 from the dog bite, for the teeth of the animal struck close to his eyelid, leaving scars that might be permanent and causing a slight droop in one of the boy's eyelids. Just before the dog bit Vincent, Vincent leaned over to pet the dog. The dog was six years old at the time he bit Vincent. The animal was a collie or German sheperd. He had, so far as the evidence showed, never bitten anyone before. The dog had been trained to be a watch-dog.

QUESTION - Was the evidence strong enough to find that the dog was dangerous and that the dog's owner knew the dog to be dangerous?

DECISION OF COURT - Yes. Anyone who keeps a dangerous domestic animal is liable for any harm the animal causes. Some states have laws indicating that a dog is "entitled to one bite" before it can be considered dangerous. Pennsylvania does not have such a law.

FILBURN v. PEOPLE'S PALACE & AQUARIUM COMPANY, LTD. - 25 Q.B. Div. 258 (1890).

TOPIC - Damages done by animal attack.

FACTS - Filburn, plaintiff, was at the People's Palace & Aquarium Company, Ltd. where elephants were being exhibited. An elephant attacked Filburn causing him injury.

QUESTION - Is a person who owns an elephant liable for injury that it causes?

DECISION OF COURT - Yes. An elephant is within the class of animals known to be dangerous and the owner of such an animal keeps him at his own risk. The owner is strictly liable for any damages caused by the animal's actions.

SPANO v. PERINI CORPORATION - 25 N.Y.2d 11, 250 N.E.2d 31 (1969).

TOPIC - Damage to property resulting from blasting operations.

FACTS - Perini Corporation set off a dynamite blast which wrecked a garage owned by Mr. Spano. The garage was not wrecked due to the force of the blast itself but was wrecked due to the force of the shock waves caused by the blast. There was no physical trespass onto the property owned by Mr. Spano.

QUESTION - Is a person who engages in blasting activities strictly liable for damages done?

DECISION OF COURT - Yes. Blasting is a dangerous activity as recognized by law. Any person engaged in blasting is strictly liable for damage done to the property of others.

LUTHRINGER v. MOORE - 31 Cal.2d 489, 190 P.2d 1 (1948).

TOPIC - Damages caused from gas fumes.

FACTS - Mr. R. L. Moore, defendant, had been engaged in exterminating cockroaches in the basement of a drugstore using hydrocyanic gas. The next morning Albert Luthringer, an employee in the drugstore, arrived for the day's work. He was soon overcome by inhaling the gas and became ill. He sued Moore for damages amounting to $10,000.

QUESTION - Is an exterminator strictly liable for injuries resulting from his work?

DECISION OF COURT - Yes. In such an activity as exterminating, there is a high risk of serious harm to others. Moore knew or should have known that someone might be injured by the gas fumes.

BECK v. BEL AIR PROPERTIES, INC. - 134 Cal.2d 834, 286 P.2d 503 (1955).

TOPIC - Damages for injury to property.

FACTS - Mr. William S. Beck owned a house and lot in a new subdivision. Bel Air Properties, Inc. was using bulldozers to prepare another section of a subdivision. The earth scraping work was being done at the top of the canyon. During the course of the work, heavy rainfall caused large amounts of loose soil and rocks to flow over Mr. Beck's property damaging his house and lot. Mr. Beck sued Bel Air Properties, Inc. claiming that they were strictly liable for the hazardous activity of bulldozing.

QUESTION - Are bulldozing operations in connection with developing a subdivision considered as hazardous activities under the law?

DECISION OF COURT - No. Bulldozing operations in this case are not hazardous activities and therefore are not subject to strict liability under the law. The construction and maintenance of new lots in subdivisions is not considered to be hazardous. Bel Air Properties, Inc. was not strictly liable for their actions.

Other Torts

Other torts are based upon combinations of intentional acts, negligent acts, and/or acts of strict liability. These include nuisance actions and cases involving libel and slander.

Nuisance. A nuisance is an unreasonable interference by one person in the use and enjoyment of land belonging to another. While this appears to be much like trespass to land, there is a basic difference. Trespass threatens the proper possession of land. Nuisance involves the use and enjoyment of land. When the continuation of a nuisance or disturbance threatens the owner's use and enjoyment of his land, he may request that the court order the person to stop the activities involved. If the nuisance actually damages the land, the owner may sue to recover for the damage done. Conduct amounting to a nuisance must cause a real and continuing interference with the use and enjoyment of land. A slight or temporary interference is not enough to justify seeking legal aid.

The boys living next door to Mr. and Mrs. Blue continue to drive a go-cart up and down their own driveway until about eleven o'clock each night. Mr. Blue told the neighbor that the noise was keeping him and his wife from getting a full evening of rest and sleep. The neighbor replied, "Aw, mind your own business." What type of legal relief, if any, should Mr. Blue seek?

Libel and Slander. Freedom from libel and slander is the right of everyone to be secure in the enjoyment of a good reputation. Libel is a criticism or insult written or printed and distributed. Slander is a criticism or insult that is spoken and heard by others. Where Warren writes to Perry that "Mike is a murderer," Warren is guilty of libel. If Warren tells Perry that "Mike is a murderer," Warren is guilty of slander. It is illegal to write or speak to the effect that a person is a "criminal," "liar," "cheat," "drunk,"

or "coward," for these words injure a person's reputation in the community. It is also illegal to use words that insult another in his trade or business such as calling a doctor a "quack" or a banker a "cheat."

When libel and/or slander have been shown to exist, the responsibility is on the person writing or speaking to prove the truth of the statements made. If this cannot be done, the writer or speaker is guilty of libel or slander and is liable for damages to the person whose reputation has been injured.

ROGERS v. ELLIOTT - 146 Mass. 349, 15 N.E. 768 (1888).

TOPIC - Damages for nuisance.

FACTS - A Mr. Jesse Rogers, Jr. sued a church employee, Mr. Thomas P. Elliott, for ringing the church bell, which Rogers claimed caused him pain and suffering. Rogers had been suffering from sunstroke and was in a highly nervous condition. He asked the church custodian not to ring the bell, but Elliott proceeded with the ringing.

QUESTION - Do actions which produce a disturbance only to a highly nervous person cause a nuisance?

DECISION OF COURT - No. If the ringing of the bell had affected the health or comfort of other persons in the community, this could have been considered to be a nuisance. Only Rogers was disturbed by the ringing of the church bell because of his nervous condition.

HIBBARD v. HALLIDAY - 58 Okl. 244, 158 P. 1158 (1916).

TOPIC - Damages caused by nuisance.

FACTS - Mr. Hibbard owned a building that contained twelve windows overlooking the property of Mr. Halliday. In 1908 Halliday built a solid brick wall on his property line eight inches from Hibbard's building. In court Halliday admitted that the wall was built for the sole purpose of injuring the property of Hibbard but felt that he had a right to do so for the wall was built on his property.

QUESTION - Can a wall be built for the sole purpose of damaging a neighbor's building?

DECISION OF COURT - No. An individual must use his property in a way that does not damage his neighbor. Halliday's intent was to damage the property of Hibbard and this intent is illegal.

FAWCETT PUBLICATIONS, INC. v. MORRIS - Okl., 377 P.2d 42 (1962).

TOPIC - Damages for libel.

FACTS - In a 1958 issue of True magazine there appeared an article entitled "The Pill That Can Kill Sports" concerning the use of amphetamines, "pep pills" and other similar drugs by athletes throughout the country. The lengthy article indicated that players on the Oklahoma football team for the 1956 season used drugs. Throughout their undefeated season, plaintiff, Dennis Morris was fullback on the alternate squad of the 1956 Oklahoma football team. He sued Fawcett Publications, Inc. for libel based upon the newspaper article and sought damages in the amount of $150,000. Evidence brought out in court showed that the substance administered to Oklahoma players on the 1956 football team was "spirits of peppermint," a harmless substance used for dryness of mouths. There was no evidence that any member of the team used amphetamine or narcotic drugs. The lower court jury returned a verdict for Morris and against Fawcett in the amount of $75,000 for damages.

QUESTION - Can a member of a group sue for libel based on a magazine article indicating illegal drug use among members of a group?

DECISION OF COURT - Yes. The article was libelous of each member of the football team even though there was no reference to Morris personally. The judgement in favor of Morris and against Fawcett Publications, Inc. was upheld.

BENNETT v. NORBAN - 396 Pa. 94, 151 A.2d 476 (1959).

TOPIC - Damages for slander.

FACTS - On Saturday afternoon, December 28, 1957, Shirley Bennett entered Lynn's Self-Service Store in Erie, Pennsylvania, for the purpose of purchasing a purse. She made a selection but could not find a cashier to wrap it for her. She moved on to look at some skirts an aisle or two away carrying the purse with her. Being in a hurry to return to the hospital where her child was recovering from an operation, she soon replaced the purse and left the store without buying anything.

Twenty feet from the entrance Shirley was overtaken by the assistant manager of the shop, who was red-faced and angry and in his shirt sleeves. He put his hand on her shoulders, put himself in position to block her path and ordered her to take off her coat, which she did. He then said: "What about your pockets?" and reached into two pockets on the side of her dress. Not finding anything, he took her purse from her hand, pulled her things out of it, peered into it, replaced the things, gave it back to her, mumbled something, and ran back into the store. Passers-by stopped to watch the search take place, to Mrs. Bennett's great distress and humiliation.

QUESTION - Do the actions of a store manager who frisks a customer before a group of by-standers create an action for slander?

DECISION OF COURT - Yes. The angry performance of the assistant manager was an unreasonable and serious interference with Shirley Bennett's person. The acts of the assistant manager amounted to slander before the eyes of the public.

PROPERTY

ORIGIN OF LAND OWNERSHIP

The ownership of land today is considered to be a natural right and something that is easily accomplished if one has the money. However, the Anglo-Saxon history of land ownership tells us that owning land was not a simple matter centuries ago. The kings and the church controlled practically all the land, and they did not want to part with it. The ownership of land meant power and control over the people.

William the Conqueror said that all of England belonged to him, and all who owned land before he became king would now have to pledge a special allegiance to him. This would mean that they would have to admit that the land was really his and that they only had an interest in it which he, as king, permitted them to have. He would give land to those who would pledge support to him. To the lords who would pledge special services such as the arrow makers, cooks, armorers, household priests, etc., he would award land. In like manner he could take it away anytime he so desired. Therefore, land was used to bind subjects to the king and to make certain that they continued to remain loyal and obedient.

History seems to indicate that the first and most common type of land ownership was by the family rather than by the individual. Control would pass from the head of the household to the surviving heir who would be the next head of the household.

As early as the twelfth century, land was generally transferred from one person to another during a ceremony that was called *livery of seisin*. This simply involved the owner giving a twig or a handful of soil to the new owner as he said a few appropriate words indicating that the land was changing hands.

Land could be inherited by the male children if the lord approved. It was generally not well accepted for daughters to inherit land. Many years later the common law was changed and women were permitted rights concerning ownership of real property.

The ownership of land in the United States can best be understood if we go back to the Virginia Colony. By 1614 land was owned by only a few private citizens. At this time every family in the colony was assured of a house of four rooms, rent free, for one year. The first real division of land took place in 1616 when the older settlers wer permitted to have 100 acres. After this the new settler (adventurer) was allowed to buy 50 acre lots. The ownership of land was a requirement if one desired to vote.

Basic Property Rights

Article V of the United States Constitution states, "No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

In 1829 Justice Story wrote, "The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred."

One of our great freedoms is the freedom to own property, to buy and sell property, and to be protected by law from others who would attempt to take away that property which rightly belongs to us. Years ago, an English philosopher, J. Bentham, said,"Property and law are born together. Before laws were made there was no property. Take away laws and property ceases."

It may be argued that all animals have some property or at least an interest in property. A pet dog certainly treats a soup bone, once in his possession, as if it were private property. Other dogs are warned off with appropriate growls and snarls indicating ownership, and even humans carefully respect his obvious rights. His rights to the soup bone are protected by his brute force

only. While that may be sufficient for the dog, it is not enough nor should it be enough for us.

A primitive man who killed a bear hoped to keep it for himself. He watched his neighbors and was constantly suspicious of all those who deliberately or accidentally came near his cave. How miserable he must have been. Other people within primitive society had the same fears. A decision was made to protect their individual interests. They introduced a principle of property ownership which came to be treated and accepted as law.

A study of property must begin with the simple question, "What is property?" Property is composed of certain elements which include the right of use, enjoyment, and control of a particular thing. Laws have been created to protect such enjoyment and control and to prevent others from interfering with these rights.

CLASSES OF PROPERTY

Property has been divided into two main classes: *real* property and *personal* property. Real property is land and those things such as houses, barns, and office buildings which are permanently attached to the land. Personal property is all other things which are personally owned and not attached to land such as cars, books, stocks, and money. The definitions are very useful during our study of property, but in reality they make little sense. A car is just as "real" as a farm, and the family house is more "personal" to the owner than shares of stock. But the law defines real property as property that is generally permanent and cannot be moved. A city lot with a house on it, a farm with a farmhouse and barn are illustrations of real property. Personal property then obviously includes those things not connected with land such as automobiles, furniture, clothing, and money. Less obvious is personal property such as checks, debts due from one person to another, stocks, bonds, patents, trademarks, copyrights, and goodwill created by a prosperous business. What about an idea,

just a thought created in one's mind? Does the law consider an idea to be personal property?

> BELT v. HAMILTON NATIONAL BANK - U.S. Dist. Ct., District of Columbia, 108 F. Supp. 689 (1952).
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> Mr. Belt was in the advertising business and thought of a plan for creating a radio program, the participants to be school children who could sing or play musical instruments. The program was to be financed and sponsored by a business concern but was to be controlled by the local school authorities. Belt presented his idea to an officer of the Hamilton National Bank, indicating that he expected to be paid if the proposal was adopted. The bank decided to place such a program on the radio. The bank employed Belt to do the planning and initial work at a compensation of $25 per week with the understanding that this agreement could be cancelled on two weeks' notice. The school authorities approved the program, and after two weeks Belt's employment was stopped. The program was broadcast on the radio every week for a period of over a year. The program cost the bank about $47,000. Belt sued for payment for the use of his idea.
>
> Does the law provide for such compensation? Is there a property right in an idea and, if so, what?
>
> Originally at common law such a property right did not exist. Common law changes from time to time based upon changes in social and economic life. When an idea, which may be neither patentable nor subject to copyright is more than a mere thought and is reduced to a concrete detailed form, the law may permit a property right to exist. The court decided that the owner of the idea is entitled to payment, for his idea was used in developing the program.

Personal Property

Some of the most basic problems involving personal property are concerned with possession or the right to possession. Possession is not to be thought of as ownership. One may get possession of something in a number of ways without owning it. Where a person is in possession of personal property such as livestock, jewelry, or an automobile, the law will protect his possession against the entire world except the true owner. Where possession has been granted by the true owner, the possessor's right to control the property may be superior even to that of the true owner.

Ownership is a recognized relationship between the owner and the rest of

society with respect to a particular piece of property. The relationship involves certain rights, such as the right to keep all others from using or enjoying the property. However, such ownership may include the responsibility of paying taxes on this property.

The usual method of obtaining ownership of personal property is to buy it. There are other ways, however, by which one may acquire ownership. Ownership of a wild animal may be had by taking possession of it with the intention of keeping it. Until taken into possession, wild animals are the property of no one. Ownership of personal property which is abandoned is acquired by taking possession with the intention of keeping it. This rule is true only if the property is actually abandoned and not merely lost or mislaid.

> ERICKSON v. SINYKIN - 223 Minn. 232, 26 N.W.2d 172, 170 A.L.R. 697 (1947).
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> Erickson was employed as a painter and while painting in the hotel discovered some money under the hotel room carpet. Does the money belong to Erickson or to the hotel?
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> The court decided that under the facts of the situation that the original owner of the money had voluntarily given up ownership. The fact that the money appeared to have been there for more than fifteen years lends support to the conclusion that it was abandoned and, therefore, Erickson was right in his claim to it.

The distinction between "lost" and "abandoned" goods rests on the situation of the owner of the goods when he or she last had possession of the goods. If the owner has accidentally and unintentionally lost possession, the goods are lost. If the owner has deliberately given up both ownership and possession of the goods, the goods are abandoned. Abandoned goods are the property of no one, and the finder may acquire ownership merely by taking such goods into possession.

BRIDGES v. HAWKESWORTH - Court of Queen's Bench, 21 L.J., N.S., 75 (1851).

Mr. Bridges was a traveling salesman and Mr. Hawkesworth was a shopkeeper. Bridges visited Hawkesworth's shop in October 1847, and while in the shop noticed a small package on the floor. Bridges picked up the package which contained money and left it with Hawkesworth to give to the true owner. The true owner never requested the money, and after three years Bridges sued to recover the money from Hawkesworth. Whose money was it?

The court decided that Bridges should have the money. The court stated that it was lost property and the finder of lost property was entitled to it against all people except the true owner.

Bailment. A bailment is a legally recognized relationship which occurs when one person leaves personal property with another, usually for a particular purpose and under some sort of an agreement. The agreement may be written or oral and may be either gratuitous (freely given) or for a price. A car rental agreement is an example of bailment contract for a price. When a person takes clothes to the laundry, there is an implied bailment agreement that the clothes will be cleaned and returned to the owner, again for a price.

COMMONWEALTH v. POLK, 256 Ky. 100, 75 S.W.2d 761, (1934).

Polk, a county clerk, collected fees for license taxes in the amount of $1,362.67. Due to the late hour of collection, the fees could not be deposited in a bank. He did, however, place these funds in an unguarded safe in his office. No other protective precautions were taken. During the night the uninsured safe was burglarized and the contents stolen. Did Polk fulfill his obligation as a bailee of holding the funds in trust?

The court held that under a bailment, the bailee must exercise utmost good faith and diligence in performance of his duties. Since Polk did not establish that he faithfully exercised diligence in protection of these funds he was held liable for the loss.

A bailment cannot exist today unless the *bailee* realizes that he has possession of property belonging to the owner or *bailor*. Until such time as one is aware that he was given or has received possession of the property of another, no bailment exists. For example, where a coat is checked in a coatroom, the attendant may become the bailee of the coat but not of any valuable jewelry left in its pocket unless made aware of its presence by the bailor.

Real Property

In the beginning of this chapter it was mentioned that real property is land and those things such as houses, barns, and office buildings which are attached to the land. Standing timber is considered to be a part of the land and is real property until it is cut. Minerals, generally speaking, belong to the person who owns the land. Oil, gas, and water are also generally accepted to be parts of the land and are, therefore, real property. Early common law indicated that the owner of the land owned all the space above the property and all the land beneath it. It is now concluded, however, that because of air transportation the owner should be entitled to only the space above his land which would be necessary for the full use and enjoyment of the land. The air space above that is considered to be open and available for air travel.

SMITH v. NEW ENGLAND AIRCRAFT CORPORATION - 270 Mass. 511, 170 N.E. 385 (1930).

Mr. Smith owned land near an airport. Planes flew low over his property in order to land. Smith sued the airport to prevent the planes from flying over his land. He claimed that airspace above his land was his.

The court ruled that reasonable airspace over his land was his. However, because of the necessity for airports he could not sue to prevent the planes from flying over his land.

BUTLER v. THE FRONTIER TELEPHONE COMPANY - 186 N.Y. 486, 79 N.E. 716 (1906).

The telephone company put a telephone wire across Mr. Butler's land. The wire was in the air and did not touch the ground owned by Butler.

Can Butler sue the company to make it remove the wire? The court ruled "yes." The court said that Butler was deprived of his property right to reasonable space above his land.

SOUTHWEST WEATHER RESEARCH, INC. v. ROUNSAVILLE - 160 Tex. 104, 320 S.W.2d 211 (1958).

A weather company owned airplanes, and the pilots flew over land owned by a number of ranchers. They were seeding the clouds in order to prevent hail. The ranchers sued the weather company on the grounds that its activities prevented natural rainfall upon their property. The ranchers asked for a court order preventing the airplanes from seeding the clouds.

The court ruled that a landowner is entitled to such precipitation (rain, snow, hail, etc.) as nature may bestow; and, therefore, the weather company was to discontinue cloud seeding above the property of the ranchers.

A *fee simple estate* in real property exists when a person has ownership and there are no legally recognized claims against his right of ownership. This means that the owner of property in fee simple is entitled to the entire property with the right to dispose of it during his lifetime, or he may will it to his heirs. As a purchaser of land you would be concerned with obtaining a fee simple title of ownership in the property with no limitations upon your rights to use the land, to sell it to others, or to will it to your children.

Assume Bob has an estate in fee simple and would like to sell all of his interest in the land to Steve, but only if Steve uses the land for church purposes. The document reads: "To Steve and his heirs so long as the land is used for church purposes." Steve has a fee simple interest but because of the condition or qualification that the land must be used for church purposes, Steve's ownership, even though it may last forever, is limited.

Many problems exist in neighborhoods where city or municipal zoning laws are restrictive. A part of a town may be restricted for commercial purposes, another part may be restricted for residential purposes, or there may be no zoning restrictions at all.

Jim used his premises as a funeral home. Henry, his neighbor, brings legal action against Jim on the basis that the property is a residentially zoned area, and Jim should not operate a funeral home in that neighborhood.

A court would probably rule in favor of Henry on the grounds that the continuous atmosphere of death is depressing and that a funeral home should not be allowed in a neighborhood zoned for residential purposes.

COWLING v. COLLIGAN - 158 Tex. 458, 312 S.W.2d 943 (1958).

A neighborhood was zoned for homes. Mrs. Colligan claims that her land is worth four times as much for commercial purposes as for residential purposes. Mr. Cowling sued to prevent her from using her land for commercial purposes.

The court ruled that Cowling was right and that the property owned by Mrs. Colligan could not be used for commercial purposes.

BOVE v. DONNER-HANNA COKE CORPORATION - 236 App. Div. 37, 258 N.Y.S. 229, 179 N.E. 476 (1932).

Mrs. Bove bought property in a neighborhood zoned for industrial purposes. She built a store and a home. Years later, the Donner-Hanna Coke Corporation built a coke oven across the street from Mrs. Bove. She sued for damages because of the steam, dirt, and soot coming from the coke oven and asked the court to stop the coke corporation from operating its business.

The court ruled that residents of industrial areas must endure a certain amount of discomfort. The city ordinance permitted coke ovens to operate in that area, and Mrs. Bove should have known this when she bought her property.

OZARK POULTRY PRODUCTS, INC. v. CARMAN - 251 Ark. 389, 472 S.W.2d 714 (1971).

The Ozark Poultry Products, Inc., manufactured a substance used in fertilizer and poultry feed. Residents in the area brought suit against the company claiming that the odors were so terrible that they could not sleep at night or eat meals without being nauseated.

The court decided that the company was a private nuisance and prevented the residents from the right to enjoy their homes. The court ruled the plant would have to stop its operations.

Sale of Real Property

The sale of land centers around two separate legal documents, the contract to sell and the deed which actually transfers the title.

The contract to sell must point out a specific piece of real property so clearly that the property can be easily identified. A building described by street numbers is sufficient if the city, county, and state are mentioned.

Compared to a sales contract, the deed is a simple document. The purpose of the deed is to transfer legal title from one person to another. While no one form of a deed is in universal use, the modern deed does follow a general pattern. There are two basic types - *warranty deeds* and *quitclaim deeds*. Either type is sufficient to transfer such interest as a seller has, but the warranty deed includes personal promises by the owner that his title to the deed is good against all claims. The quitclaim deed is used to transfer only such interest as the seller may happen to have in the land. Generally speaking a buyer would be willing to pay more for land transferred to him by a warranty deed.

Recording System

The buyer of land wants to be sure that the seller has a good title which can be transferred to him. The land recording system helps give him that assurance. In a complex society like ours, buyers have to rely on some official record which shows all of the transactions in regard to the property in question. The recording system creates a permanent record of land ownerships which can be examined by anyone wishing to buy land. These records are usually copied from books kept in a public office in the local unit of government, usually a county where the land is located. Since in many counties there will be hundreds of books and thousands of recorded deeds, careful indexing is required if the recording system is to accurately reflect land ownership.

Adverse Possession

The common law provides that title to land can be acquired by *adverse possession*. A person who is not the lawful owner of real property uses the property for a period of years as if he actually owned it. In most states this period of time must be from 15 to 21 years. If during this period the true owner does not exercise his rights of ownership in any way, title in the property is transferred to the adverse possessor. The adverse possessor must occupy the property in an open manner that would give reasonable notice to the true owner and to the entire world that he is

claiming ownership over the property.

The reason the law recognizes adverse possession as a way of gaining ownership of land is to penalize the owner that "sleeps" on his rights of land ownership. It also serves to protect members of the community who have dealt with the adverse possessor, relying upon his appearance of ownership.

JASPERSON v. SCHARNIKOW - Cir. Ct. of App., Ninth Circuit, 150 F. 571 (1907).

Mr. Jasperson built a cabin on a piece of land and conducted lumbering operations. He found out that the land belonged to Mr. Scharnikow but he continued to operate his business on the land for many years. Can Mr. Jasperson claim ownership of the land because of adverse possession?

The court ruled that Mr. Jasperson could not be the owner by adverse possession since he knew that the land belonged to Mr. Scharnikow.

MAAS v. BURDETZKE - 93 Minn. 295, 101 N.W. 182 (1904).

Maas moved in and occupied some land thinking that it belonged to the U.S. He intended to acquire ownership by homesteading it based on the federal homestead law. However, the U.S. did not own the land. It was owned by an individual. Can Maas get title to the land by adverse possession?

The court decided that since Maas intended to acquire title and really homesteaded the land thinking that it was his own, then he could become the owner by adverse possession.

HUGHES v. GRAVES - 39 Vt. 359 (1867).

Hughes occupied a portion of Graves' property for fifteen years. Graves came back and reoccupied the property. Did Hughes give up his adverse possession? Did Graves regain ownership of the land?

The court determined that Hughes had become the real owner by adverse possession and that the land now belonged to him.

Eminent Domain

The Fifth Amendment to the Constitution states that, "No person shall be--deprived of life, liberty, or property, without due process of law; nor shall

private property ba taken for public use, without just compensation."

Can a state take land away from an owner, pay him a fair market price for his property, and then build a public building on this land? If the owner objected and sued the state, what would be the result?

Eminent domain is a right which a government exercises over the property of individual citizens. The purpose of the taking must be for the public good and a fair and just price must be paid the owner. Pipelines, railroads, public highways, and public buildings have all been built by such a method.

Cities and counties, under the Urban Renewal Act, can condemn slum and blighted areas, tear down the buildings and sell the property to private citizens who will develop the land according to a plan approved bv the city or county. Federal funds have been provided to cities and counties for this purpose.

BERMAN v. PARKER - 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27 (1954).

The Bermans owned property, a department store, in an area that was condemned by the city. The city planned to redevelop the area and convert a part of it into low-rent housing. The Bermans sued to prevent the city from taking their property. They claimed that their property was commercial, was not slum housing and should not have been condemned.

The court decided that the development plan of the city was on an area basis and therefore the property could be taken by the city. The rights of the Bermans would be satisfied when they had received the just compensation provided for in the Fifth Amendment. The city could take the property.

Landlord and Tenant

When we rent real estate from another we become the *tenant* and the owner is called the *landlord*. A tenant is entitled to full and exclusive possession and enjoyment of the premises but cannot exploit or destroy the value of the property. Ordinarily a tenant is not liable for payment of taxes on the property even if the landlord grants to the tenant all the income and profits from the land during the term of the agreement to rent or *lease*.

In early common law the tenant's failure to pay rent as agreed generally did not entitle the landlord to evict the tenant or terminate the lease. The landlord's

only remedy was to seize as security for the rent due any property of the tenant found on the premises.

Today, the situation is different. The landlord is permitted to stop the lease and take possession of the premises. If the tenant should abandon the premises, the landlord may elect to retake possession of the premises and attempt to re-rent. The lease remains in effect and the tenant may be held liable for the full rental over the balance of the term less whatever amount can be obtained on re-rental.

A tenancy may be for a certain number of days, weeks, months, or years from a state specified in the lease contract. It may be a period of time which can be definitely determined; for example, "from the date of this lease until next Christmas." A tenancy may be subject to conditions. For example, Art leases to Tom a certain piece of land for 21 years upon the condition that if Art at any time desires to sell the land, Art may terminate the lease upon 30 days' notice.

Rod rents certain property to Reggie for five years; but, if Reggie does not pay rent for 60 days, then this lease shall be terminated. This seems to create an agreement subject to automatic termination on the happening of the condition--default of rent. However, in the leading case of Lowenthal v. Newlon, 138 Minn. 248, 164 N.W. 905 (1917), the court said that only a condition was created, and the lease continued until the landlord exercised his power of termination. Such a provision was undoubtedly inserted into the lease contract for the protection of the landlord. To give it an automatic termination effect would be benefiting the tenant by releasing him from liability for future rent payments due under the lease. Therefore the lease will be terminated only if the landlord sees fit to terminate it.

The landlord is not bound to repair the premises unless it is so stated in the lease contract. The reason for this rule is that exclusive possession is given to the tenant and that possession excludes the right of the landlord to enter

the premises to inspect and make the necessary repairs. Still, most lease agreements require the tenant to make necessary repairs and give the landlord the right to enter in order to inspect the property and make the repair himself in case the tenant does not.

GIFTS

It would seem that an owner ought to be able to give his property away without any legal complications. In one sense it can be done, so long as both parties, *donor*, the giver, and *donee*, the receiver, agree that a gift has in fact, been made.

The law of gifts centers around the issue of whether the owner intended to be a donor and whether a gift was actually made. It might seem reasonable to require that all gifts be accompanied by a written document stating the reason for the gift and indicating what the donor intended. This has never been recognized as a requirement for making a gift, however. A good reason why this is not the case is that the custom of people generally is to give away their property in an informal fashion. The law, to some extent at least, must deal with people as it finds them.

The law is normally not concerned with why the gift was given. The desire to make a gift may arise from the purest of sentiments, or it may be the result of a less noble purpose. A person's property is his own, and the right to dispose of it as he sees fit is protected.

Gifts made in apprehension of death have a conditional aspect. A gift made in apprehension of death is made subject to three conditions implied by law, the occurrence of only one of which will defeat the gift: (1) the recovery of the donor from the sickness or peril; (2) the donor withdrawing the gift before his death; (3) death of the donee before the death of the donor.

Mr. Smith was ill and expected to die. While in the hospital he gave to Miss Jones a valuable ring expressing the desire that she have this ring since he expected to die. Smith recovered and later made a will in which he bequeathed

all of his property to Mr. Brown. Upon the later death of Mr. Smith, can Mr. Brown recover the ring from Miss Jones? Courts generally hold that Mr. Brown can recover the ring because the conditions under which the gift occurred were not fulfilled at that time because Smith did not die.

Personal property may be physically handed to the donee but the gift of real property is a more formal affair. A writing is usually required for the conveyance of land, and this applies to gifts as well as to transfers for value.

CONTRACTS

Perhaps the beginning of the contract system can be traced back to the ancient church courts. When promises were made by the people, the church looked upon these as moral obligations. If a promise was broken, the church could determine it to be a violation of faith and might punish the offender. In such a religious environment a man's word became binding. It was a serious matter indeed to be brought before the church to respond to charges of breaking a promise.

Eventually, in many parts of the world, a seal was used to bind an agreement. Before the day when most individuals could read and write, a person would seal or sign an agreement in wax by using his signet ring. Such rings were individual in nature, and they served as a means of identifying the person who made the promise.

Gradually contracts became more of a legal responsibility than a moral obligation. The church no longer had the power to act when a promise was broken.

Definition

A contract is more than simply a promise or a set of promises. It is a duty on the part of those who agree to a contract to perform it. The law also provides protection in the event that the contract is broken or violated.

Basically, a contract is an agreement which the law will enforce. People cannot agree to something which violates the law and expect the courts to protect them. For example, an agreement to purchase illegal drugs, an

agreement or contract to murder someone or, an agreement to purchase stolen property are all illegal or in violation of the law, and the law will not provide any protection for such agreements.

Types of Contracts

Unilateral and Bilateral Contracts. A contract involves at least two parties (a party may be an individual, a group of people, or even a corporation). If only one party makes a promise, then the contract is called a *unilateral* contract. If John tells Henry, "If you climb that mountain, I promise to give you $50." The contract is *unilateral* because only John made a promise. It is a good contract because, if Henry climbs the mountain, the courts will permit him to collect the $50 from John.

If both parties make promises, then it is called a *bilateral* contract. If John says to Henry, "If you promise to climb that mountain, then I will promise to pay you $50." If Henry agrees to climb the mountain, both parties have made promises. That is a *bilateral* contract.

Express and Implied Contracts. When the parties make promises with words, the contract is called an *express* contract. When parties by actions or conduct indicate an agreement, it is said to be an *implied* contract.

An *express* contract would be one such as "If you proimse to climb that mountain, then I promise to pay you $50."

An *implied* contract could be one such as Fred calls up a TV repairman and asks him to come to his home and repair his TV. It may be implied that, even though no money was mentioned, Fred has agreed to pay a reasonable fee for the TV repairman's services. Even though no money was mentioned, the law concludes that an obligation exists and justice requires that Fred pay the repairman.

Making a Contract

A contract is made when two or more parties agree upon what they wish to exchange and the terms of the exchange. The exchange may be in the form of an article, an action, or an agreement not to do something. Many contracts are not written. Generally a contract is legal if there has been an *offer*, an *acceptance* of the offer, an exchange of *consideration*, and a *meeting of the minds*.

Offer and Acceptance. If you tell a friend you will sell him your science book, that is an invitation to bargain. If, however, you tell a friend you will sell him your science book for 2 dollars, that is an *offer*. If the friend agrees to buy it for that amount, that is an *acceptance*. Suppose you lose something of value to you. You let it be known that you will give a 5 dollar reward for its recovery. You have made an offer. Someone hears about your offer, finds the item, and returns it to claim the reward. That person's action creates an acceptance of your offer.

> BROADNAX v. LEDBETTER - 100 Tex. 375, 99 S.W. 1111 (1907).
>
> Ledbetter offered $500 reward for the capture and return of a prisoner who had escaped. Broadnax did not know about the reward, but he did capture the escaped prisoner and returned him to the authorities. Broadnax now claims that even though he did not know about the reward, he did return the prisoner and should, therefore, receive the $500.
>
> Is it necessary for Broadnax to know about the reward before he can collect?
>
> The court said "Yes." There must be an offer and an acceptance. There was an offer, but Broadnax had not accepted it since he knew nothing about it.

Occasionally courts have had difficulty in determining real justice in contractual agreements. The case of WEBB v. McGOWIN - 232 Ala. 374, 168 So. 199 (1936) is an example.

WEBB v. McGOWIN - 232 Ala. 374, 168 So. 199 (1936).

Webb worked for the W. T. Smith Lumber Company. He was in the process of dropping a 75 lb. pine block from the upper floor of the mill to the ground when he noticed McGowin directly under the block that was being released. In order to keep the block from hitting McGowin, Webb fell with the block. Webb suffered many injuries, and it left him unable to perform physical labor. In return for saving his life McGowin promised Webb $15 every two weeks for the rest of his life. He paid the $15 as promised for eight years, and then he died. Upon McGowin's death the payments were stopped. Webb is suing McGowin's estate for the payments he claimed are due him.

The court decided that there was a moral obligation to continue payments to Webb. The facts indicated that McGowin received a material benefit and Webb could collect.

Do you agree with the decision? Should the McGowin estate continue to pay even though McGowin is now dead?

Sometimes there is much confusion over whether a real offer was intended or if an opinion was being expressed. If Jim commented to Bob, "Your car is a beauty! It would be worth $5,000 to me!" Bob cannot conclude that is an offer. It is merely an expressed opinion. The law states that a reasonable person must believe that an offer has been made.

LEFKOWITZ v. GREAT MINN. SURPLUS STORE - 251 Minn. 188, 86 N.W.2d 689 (1957).

The store advertised in the newspaper the sale of certain fur stoles for $1.00 each. The fur stole in question was advertised to be worth $139.50 and was on sale for $1.00 -- FIRST COME, FIRST SERVED. Lefkowitz was the first to arrive at the store and offered the $1.00 for the fur. The store refused, stating that they intended to sell to women only. Lefkowitz sued.

The court ruled that in this particular case the ad was an offer; and, since Lefkowitz responded by being the first one there, then there was a contract and the store was liable. The court also ruled that the statement by the store that it was intended for women only was a change in the offer after it was accepted and, therefore, was not valid.

An invitation to make an offer must be distinguished from an offer. For example, Jim asks, "Bob, would you be willing to sell that car for $5,000?", and Bob comments, "No, I would not sell it unless I could get $7,500 for it." Jim cannot then say,"Sold! I will give you $7,500." The courts hold that no offer was made by Bob. He was merely voicing an opinion or, at the most, was saying to Jim, "Make me an offer."

OWEN v. TUNISON - 131 Me. 42, 158 A. 926 (1932).

Owen wrote a letter to Tunison in which he offered to buy certain land and buildings that Tunison owned. He offered Tunison $6,000. Tunison replies in writing stating that he would not sell unless he could get $16,000 cash. Owen answered his letter and said that he would buy the property for $16,000.

The question in this case was simply did Tunison make an offer to sell for $16,000 cash?

The court ruled that Tunison's statement was merely an invitation to Owen to make further offers. This was a minimum price to Tunison; he was not offering to sell at that price.

CRAFT v. ELDER AND JOHNSTON COMPANY - Ct. of App. of Ohio, 38 N.E.2d 416 (1941).

Craft read an advertisement in the local newspaper in which Elder advertised to sell a $175 sewing machine for $26. Craft tried to give Elder $26 for the machine but Elder refused to accept it.

The question the court had to answer was -- Is an advertisement such as this an offer to sell to the general public?

The court ruled "No." There was no offer but merely an invitation to the public to bargain. An advertisement is not an offer.

This case is different from the Lefkowitz case in that "First Come, First Served" created a promise different from most ads. The Craft case represents the general rule, Lefkowitz, the exception.

A promise does not have to be expressed in words. A promise can be made by certain actions or by silence. At an auction a flick of a finger or a nod of the head may seal a contract.

Meeting of the Minds. For a contract to be valid there must be a *meeting of the minds*. Each person must have a clear understanding of what exchange is involved in the agreement. Lonnie has a blue sweater she wishes to exchange for Maggie's pink blouse. Maggie has two pink blouses. One has long sleeves and the other has short sleeves. Maggie, thinking Lonnie means the short-sleeve blouse, agrees to the exchange. This is not the blouse Lonnie wanted. Thus there was not a binding agreement since there was not a meeting of the minds.

RAFFLES v. WICHELHAUS - Court of Exchequer, 2 Hurl & Colt. 906 (1864).

Raffles agreed to sell some cotton to Wichelhaus. The cotton was to arrive in England on board a ship named "Peerless" sailing from Bombay. There were, however, two ships by that name. One was to leave Bombay in October and the other in December. Wichelhaus intended the ship leaving in October and Raffles intended the one leaving in December.

The issue for the court to determine was whether or not both parties contracted for the cotton arriving on the same ship.

The court ruled "No." It was shown that each man had intended a different ship. There was no meeting of the minds and, therefore, no binding contract.

Consideration. Most courts hold that for a contract to be valid there must be not only an offer and an acceptance but also a *consideration* involved. This

is usually defined as that which the promisor requests in return for his promise. Henry offered to buy William's stamp collection for $15,000. The stamp collection is the consideration William must give if he is to receive the $15,000.

Mistake. If the offer is obviously a mistake and the person who receives the offer knows that it is a mistake or should know that it is a mistake, he cannot take advantage of it. Jim writes to Bill offering to sell his business for $2,000. If Bill knows that there is an error and it should read $2,000,000, then he cannot accept it and expect the contract to be valid.

Breach of Contract. A breach (breaking) of a contract should be studied very carefully. The law prefers to keep both parties "honest." A breaking of an agreement has to be justified. There must be a very good and sound reason for it, or the courts will not protect the person who breaks the contract.

If Rick Construction Company signs a good contract to build a warehouse for Smythe for $100,000 by January 1 and then three months later refuses to complete the warehouse claiming labor costs and materials are too high, that may be a breach of contract. The construction company has failed to live up to its promise.

SUPT. AND TRUSTEES OF PUBLIC SCHOOLS OF CITY OF TRENTON v. BENNETT - 27 N.J. Law. 513, 72 Am. Dec. 373 (1859).

A builder, Bennett, contracted with the school board of Trenton to build, erect, and complete a building upon a certain lot for a price. The house, before its completion, falls down because of the shifting soil. Bennett claims he should not have to rebuild.

The question is whether the builder or the school board should suffer the loss. Can Bennett break the contract?

The court determined that the builder contracted to build, and he must do so regardless of the loss. The court said that a sudden tornado or a gale of wind or the softness of the soil were all incidental--the builder must build regardless or suffer the loss. The builder did not show that the performance of the contract was impossible.

WHITMAN v. ANGLUM - 92 Conn. 392, 103 A. 114 (1918).

Whitman contracted with Anglum for 175 quarts of milk each day from April 1, 1914, to April 1, 1915. On November 23, 1914, the city quarantined Anglum's cattle and the products of his farm. Shortly after this all his cattle were killed by law because they had "hoof and mouth disease."

The basic question is whether Anglum is excused or released from his contract to furnish the 175 quarts of milk per day.

The court ruled that even though it might be difficult for Anglum to provide the milk, he is not released from the contract because of a temporary disability. He is still obligated to perform his part of the agreement.

SURETY DEVELOPMENT CORP. v. GREVAS - 42 Ill. App.2d 268, 192 N.E.2d 145 (1963).

Grevas contracted with Surety Development Corporation for the construction of a prefabricated house. The contract was signed, and the completion date for the house was to be September 27, 1961.

At 4:00 p.m. on September 27 Grevas arrived on the scene to take over his house and found workmen everywhere attempting to complete the house. They were "slapping on siding, laying the floors, bulldozing the yard, hooking up the utilities, etc." Grevas would not accept the house even though the foreman assured him that the house would be ready by 5:30 p.m. The house was substantially completed by 5:30 p.m. even though Grevas had left at 4:00 p.m.

The question is can Grevas claim a breach of contract by the construction corporation since he inspected at 4:00 p.m.? Can Grevas, therefore, refuse to pay for the house?

The court decided that even though there was bad timing on the part of the construction corporation in that it was not substantially completed until 5:30 p.m., it was an honest and faithful performance of the contract; therefore, Grevas must pay as agreed. Even though there was not complete compliance with the agreement, there was substantial compliance and no bad faith. That is all that the law requires to force both parties to abide by the agreement.

Lack of Contractual Capacity

Minors. A minor is a person under the age which the state has by law declared to be adulthood. The age is usually set at 21 but may be lower in some states. If minors marry, many states accept this as automatic adulthood.

A minor is regarded by law as too immature to enter into a business deal on equal terms with an adult. Thus special protection of the law is given to the underage person. Most contracts made by a minor can not be enforced. The law does hold minors fully responsible for some contracts if the youth lives alone without support from a parent(s) or a guardian(s). Contracts entered into for necessary items can be enforced. Necessary items include such things as food, housing, clothing, basic education, medical services, or tools needed for making a living. Some states also have laws which bind a minor to a contract to give services as an actor or a professional athlete if the contract has been approved by a court.

What special contract laws does your state have for minors?

What might happen if a minor is dishonest about his age or other statements used to effect a contract?

> KESER v. CHAGNON - 159 Colo. 209, 410 P.2d 637 (1966).
>
> Chagnon, a minor who was 20 years, 11 months old, bought a used Edsel automobile for $995 from Keser. Chagnon told Keser at the time that he was 21. After Chagnon reached 21 (he was actually 21 years, 2 months), he returned the Edsel and tried to cancel the contract.
>
> Will the courts permit a minor who misrepresents his age to cancel a contract after he reaches 21?
>
> The court ruled that Chagnon could cancel the contract but that, because he misrepresented his age, damages could be awarded Keser by subtracting the value of the Edsel at the time it was returned from the initial purchase price.

This guardianship of minors by the courts is not a license to break any contract that becomes an unwanted responsibility. The purpose of the law is to protect the youth that has been cheated by a more experienced adult. If you become a party to an honest contract, you are expected to fulfill your part of the agreement.

Insane, Drunken, or Drugged Person. If a person does not have the capability of understanding what he is doing, then the contract that he signs will not be enforced against him.

FAMILY AND JUVENILE LAW

MARRIAGE

What are the chances that one day you will marry? Do you know the legal side of marriage? Do you know just what responsibilities two people accept when they marry? Do married persons have any special rights under the law? We may know or have heard of people who have marriage problems. How does the law deal with problems related to married persons?

Marriage is the legally recognized status or relation of a man and a woman who have been united as husband and wife. Marriage in the legal sense is a contract to the extent that the agreement of both parties is required to create the relationship. Marriage is the foundation of the family. No change is permitted in this relationship without the approval of the courts.

State laws and regulations determine the conditions that must be met to make marriages legal. These conditions include restrictions as to age, relationship between the parties, and proof of no existing marriage. In most states the age of consent is 18 for males and 16 for females. States may require permission of the respective parents until the male is 21 and the female is 18. State regulations require that an authorized religious or legal official perform the ceremony. A marriage license is required in all states. Each party is required to take a blood test to assure freedom from venereal disease.

Some states also allow common-law marriage. Common-law marriage exists when a man and a woman live together as husband and wife without having a marriage ceremony. No license nor certificate is obtained. Legal recognition of common-law marriage is based upon the fact that the man and the woman agree to live together as husband and wife in an orderly fashion so that their neighbors and the whole world observe them living as a family unit. A common-law marriage allowed in one state is recognized by other states under the Full Faith and Credit Clause, Article IV, Section 1 of the United States Constitution.

A wife has the right to own and sell or give away property that is hers, separate and apart from the marriage agreement. She can contract in her own name and sue or be sued as an individual. Property that the husband has is his own whether it was acquired prior to or during marriage. In actual practice, however, property is usually acquired in the name of both husband and wife and is owned equally by the two of them. This property cannot be sold or given away without the agreement of both husband and wife.

When the husband dies, the wife may gain an interest in any real property that he owned. This interest is known as the widow's right of dower. Some states give her a life estate in the property of her husband. This life estate grants her the right to enjoy the real property during the remainder of her lifetime. Other states grant the widow only a part interest in real property that the husband owned at his death. Real property owned by the wife at her death is, in some states, granted to the husband for his use under his right of curtesy. Curtesy, like dower, gives the husband the use of his wife's property during the remainder of his lifetime.

The legal relationship of parent and child is created by birth or adoption. Parents have a legal duty to support their children and to provide

for their welfare. A parent on the other hand is legally entitled to the services of his child. When children are employed outside of the home, the parents are entitled to the earnings paid to the children. If someone injures another's child, the parent may bring suit for loss of services of the child. Today many states are holding parents responsible for tort actions brought against children. This is especially true in automobile damage cases where the driver is a minor child. Even today in most courts a parent and his child may not sue each other.

Adoption of a child breaks many legal ties with the natural parents and places the legal responsibility for the child upon the adopting parents. However, in many states a legally adopted child may inherit property from natural parents or other kin. For all practical purposes an adopted child has all the legal protection provided for children born to the parents.

Marriages may be legally ended by the process called divorce. Courts may grant divorces for various reasons and the legal acceptance of these reasons varies from state to state. Some of the widely accepted reasons or grounds for divorce include infidelity on the part of either marriage partner, abandonment, desertion, neglect, addiction to drugs including habitual drunkenness, and extreme cruelty. Some states also accept imprisonment of either partner for more than three years as grounds for divorce. Even a legal divorce does not excuse the husband from the responsibility of supporting his former wife and his children. The general rule of the courts is that the support provided must be at the level they enjoyed prior to the divorce. After divorce each party is then free to remarry based upon the laws of the state in which they reside.

WILLS

If a person dies without a will, the state has a plan for disposing of his or her property. The word "intestate" is used to indicate that a person dies without leaving a will. The personal right to make a will disposing of your property as you choose is a privilege granted by the legislature to the citizens of a state. When a person dies leaving a will, he or she is said to die "testate."

Most states require that a person be 18 years of age before he can make a legal will. Even then, the will of a minor can only dispose of personal property. You must be 21 years of age before making a will involving real property.

If a person dies intestate, the state has laws that determine just how his property will be distributed. Most states give the widow all of the estate if there are neither children, parents, brothers, nor sisters of the deceased. If the couple had children, the wife receives one half of the estate in some states and one third in other states. The remainder is divided equally among the children. If no children are living, the grandchildren receive the share that their parent would have inherited. State laws usually provide for the distribution of intestate estates among all kinds of combinations of possible heirs. Where there are no heirs, the whole estate goes directly to the state government.

When an individual dies testate, the courts will make every effort possible to follow the intent of the will exactly. Often wills are not totally clear as to who is to inherit what from an estate. It is the responsibility of the courts to determine as best they can what was the intent of the deceased person when he wrote his will.

Wills, when made, can always be rewritten up until the death of the

CODE OF ALABAMA

TITLE 16.

Descent and Distribution.

ARTICLE 1.

Descents.

§ 1. Descent of real estate.--The real estate of persons dying intestate, as to such estate descends, subject to the payment of debts, charges against the estate, and the widow's dower, as follows:

(1) To the children of the intestate, or their descendents, in equal parts.

(2) If there are no children or their descendants, then to the father and mother, in equal parts.

(3) If there are no children or their descendents, and if there be but one surviving parent, then one half to such surviving parent, and the other half to the brothers and sisters of the intestate, or their descendants, in equal parts.

(4) If there are no children or their descendants, no brothers or sisters or their descendants, and if there be but one surviving parent, then the whole to such surviving parent.

(5) If there are no children or their descendants, and no father or mother, then to the brothers and sisters of the intestate, or their descendants, in equal parts.

(6) If there are no children or their descendants, no father or mother, and no brothers or sisters or their descendants, then the whole to the husband or wife of the intestate.

(7) If there are no children or their descendants, no father or mother, no brothers or sisters of their descendants, and no husband or wife, then to the next of kin to the intestate, in equal degree, in equal parts.

(8) If there are no children or their descendants, no father or mother, no brothers or sisters or their descendants, no husband or wife, and no next of kin to the intestate, then to the next of kin of the intestate's predeceased spouse in the same order of priority as provided for descent to the kin of the intestate.

(9) If there are no children or their descendants, no father or mother, no brothers or sisters or their descendants, no husband or wife, and no kin capable of inheriting, then it escheats to the state. (1963, p. 925, § 1, appvd. Sept. 6, 1963)

testator. When conditions change which were dealt with in an earlier will, the testator should have a new will written and destroy the old one. This process may be repeated a number of times during a lifetime. It is important that a will describe the intent of the testator at the time of his death, for the courts attempt to follow the instructions given in the will, as written, even though it may have been written many years prior to the death of the testator.

JUVENILE PROTECTION

Under early common law there was little difference between law for young people and as applied to adults. Early common law held that a child under the age of 7 years was not legally responsible for a criminal act. He was felt to be incapable of an intention to commit a crime. From age 7 and up, the child could be held liable for crime that he committed. There were several cases when children under ten years of age were hung for serious crimes. The general procedure was to place young offenders into the same jails and prisons which held the adult hardened criminals. In the early 1800's the first reformatory school for young offenders was established in Boston, Massachusetts.

The young offender of today is defined by law in each state. The majority of these state laws define a juvenile delinquent as a child up to age 16 or 18 who commits an act that would be a crime if committed by an adult. In addition, juveniles may be held liable for behavior which is incorrigible or uncontrollable, for truancy, or for being a runaway.

The first court for juveniles was established in Chicago, Illinois, in 1899. It was not until 1967 that the United States Supreme Court decided In re Gault, that due process rights under the Fourteenth Amendment should

apply to proceedings in juvenile courts where juveniles are found to be delinquent. Prior to the decision in Gault, juvenile court judges across the nation had made tens of thousands of determinations concerning children who were brought before them for breaking laws without applying due process standards. In fact, in a few cases young offenders were given longer sentences for rehabilitation than the law would have given an adult, for the same offense.

Today, the justice system is making every effort to improve juvenile courts, to insure that juveniles benefit from all their constitutional due process rights before decisions are made. Only after proper hearings do the courts determine the particular corrective measures necessary for each case.

TYRRELL'S ESTATE - 17 Ariz. 418, 153 P. 767 (1915).

TOPIC - Action involving legality of will.

FACTS - The deceased, referred to as M. T., died leaving an unsealed envelope on the outside of which she had written, "This is my last and only will (signed M.T.)." Inside the envelope was a paper on which she had written in her own handwriting what was supposed to be her will. There was no signature on the paper. The envelope and enclosed paper were offered together in court as the last will and testament of the deceased.

QUESTION - Must a written will be signed by the person making the will?

DECISION OF COURT - Yes. Every written will must be signed by the testator and the signature must be on the paper which is the will. In this case the signature on the outside of the envelope is not enough. The signature on a written will is a necessary part of the will and without it there is no will.

BALYTAT v. MORRIS - 28 Ohio App. 2d 191, 276 N.E.2d 258 (1971).

TOPIC - Action involving right to inherit.

FACTS - Emma A. Koehler, by Item II of her will, executed on July 14, 1970, directed the executor of her estate to sell all of her property and give the proceeds to charity. Her will then stated in Item III, "I have knowingly and intentionally failed to make any provision herein for my granddaughter, SUSAN MORRIS, who has shown me no affection over the years, and it is my express desire that she in no way share in my estate."

Mrs. Koehler died testate on August 26, 1970, leaving no surviving spouse, and leaving as her only next of kin her granddaughter Susan Morris. The lower court found that based upon the wording of the will, Susan Morris could not inherit from her grandmother for the expressed exclusion made in Item III operated to leave the estate to charities. In Ohio a state law requires that when a person wills his estate to charity it must be executed more than six months prior to the death of the testator. The case was appealed.

QUESTION - Can the natural heir to an estate inherit what the testator intended to give to charity in a will signed one month before death?

DECISION OF COURT - Yes. The court of appeals found that the will granting the estate to charities would have to be made more than six months prior to death. Since the will was not made six months prior to death the estate can be inherited by the natural heir, Susan Morris. A testator can disinherit his heirs and next of kin only by leaving the property to others. Mere words of disinheritance are not enough when the estate is not disposed of by will. The estate is distributed under the state's laws of descent and distribution. In this case Susan Morris is the next of kin and can inherit the estate of her grandmother.

IN RE GAULT - 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).

TOPIC - Action involving juvenile proceedings.

FACTS - As a result of a complaint by a woman neighbor about indecent telephone calls made to her, Gerald Gault, a 15-year old boy, was placed in the Children's Detention Home. His mother was orally advised of the charge made against Gerald and that a hearing would be held the next day at 3:00 p.m. At the hearing the next day Gerald was questioned by the judge without being informed of his right to remain silent or his right to have his attorney present. During a second hearing, held one week later, Gault requested that the woman bringing the charge be present in court, but this request was denied by the judge. The judge committed Gault to the State Industrial School for a period of six years until he became 21. According to the statutes of the State of Arizona, if Gerald Gault had been 18 years old the maximum punishment would have been only two months.

QUESTION - Do juvenile courts have a responsibility to apply due process rights guaranteed under the Constitution?

DECISION OF COURT - Yes. The United States Supreme Court determined that due process rights should be guaranteed in juvenile courts including: (1) notice of charges made; (2) presence of counsel; (3) appointment of counsel if the juvenile cannot afford to hire one; (4) confrontation of witnesses; (5) right against self-incrimination. This was a landmark case in that it set the standard for applying due process rights in juvenile proceedings. Fourteenth Amendment due process rights should apply in juvenile court proceedings which may result in the juvenile's commitment to an institution.

IN THE MATTER OF SAMUEL WINSHIP - 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

TOPIC - Action involving individual's rights in juvenile court proceedings.

FACTS - Samuel Winship, a 12 year old boy, was accused of having stolen $112.00 from a woman's pocketbook. Winship appeared before juvenile court and was found to be delinquent and placed in a training school for delinquents, subject to confinement there for possibly as long as six years. The juvenile court judge stated that his finding of delinquency was based on the weight of the evidence presented. The judge stated that it was not necessary to have proof beyond a reasonable doubt as is required in courts where an adult is accused of a crime. The case was appealed to the United States Supreme Court.

QUESTION - Are juvenile courts required to prove guilt beyond a reasonable doubt in cases involving criminal acts?

DECISION OF COURT - Yes. The United States Supreme Court held that juveniles, like adults, are constitutionally entitled to proof beyond reasonable doubt when juveniles are charged with an act which would be a crime when committed by an adult.

CIVIL PROCEDURE

Legal Process

The legal process can be separated into two basic divisions: civil law and criminal law. A civil case involves a dispute between private citizens or between the government and private citizens where no crime or criminal penalty is involved. For example, if two people are involved in a fight, one or both may be prosecuted by the state in a criminal action for assault and battery. On the other hand, one may sue the other in a civil case for causing injuries. This difference is important.

In a civil suit, the court is a means of settling a dispute between private parties. The dispute must involve some legal right or responsibility which is claimed to have been breached by one of the parties and is then to be settled on the basis of law. In a criminal case the defendant is accused of violating a particular law which has been defined as a crime by the state or federal government.

Civil Case

When a dispute arises and efforts between the parties to settle their differences fail, one party, generally the complaining party or plaintiff, will contact a lawyer. Suppose Julia is injured in an automobile accident which she believes was John's fault. John denies that he was responsible for the accident, therefore, he and his insurance company refuse to pay for Julia's

medical costs or for the repair of her car. Julia then gets a lawyer to represent her in the dispute. Her lawyer will listen to her story of the accident, attempt to determine the extent of her damages, and then decide what legal responsibilities John may have violated that would make him liable to her. The lawyer will draft a complaint, setting forth the facts he believes will make John liable for Julia's injuries. The complaint is filed with the appropriate court, and a copy is served on John or his attorney.

Often a lawyer will file a complaint with a court although he has every hope that the case will never get to trial. There are several reasons for this. It indicates he is serious and sets the process in motion. Secondly, every civil action and criminal action is subject to a *statute of limitations*. This is the period of time, following the alledged violation, in *which the plaintiff must file the complaint*. The theory behind the statute of limitations is that after a period of time, witnesses may move, die, or forget what they saw, thus making proof more difficult. Also while the plaintiff is entitled to be reimbursed for losses she has suffered, she is not entitled to hold the threat of prosecution over the defendant's head indefinitely. The lawyer, therefore, must be very careful to determine the date of the accident and file the complaint within the statute of limitations or the plaintiff's grievance will not be heard. Once John knows that he is being sued he will want to retain a lawyer. Often in automobile accident cases, John's insurance company, by agreement, will represent John in the proceedings.

Much of the proceedings then takes place before the case is set for trial. Most of the cases are settled by compromise between the parties and never come to trial. Usually the attorneys, after consulting with their

clients, will meet or correspond over what compromise might be acceptable to their clients and if they are able to agree, the dispute is settled out of court.

Discovery. A major part of the process which takes place before the trial is *discovery*. During this pre-trial stage, the parties may request information from each other in either written or oral interrogations or depositions. The purpose of discovery is to narrow the issues and to determine what facts are agreed upon as well as what facts are in dispute. The parties are required by the rules of civil procedure which govern the trial process to answer discovery fully and swiftly.

Pre-Trial Conference. Once it becomes clear that the parties cannot agree on a settlement, the judge will often hold a *pre-trial conference* with the attorneys. The judge has several alternatives at this conference. If he sees an opportunity for settlement, he may wish to encourage settlement. The judge will have the parties agree on exactly what issues are in dispute and need to be litigated. These pre-trial processes--discovery and the pre-trial conference --remove much of the Perry Mason aura from the trial. The parties are not permitted to conceal "surprise" issues or witnesses until the time of trial.

Trial. If the dispute is one of those few which is not settled at the pre-trial stage, the judge will schedule the case for trial on his docket. It is important to understand the function of each of the participants in the trial. The person who files the complaint is the plaintiff--in our case, Julia. Through her attorney Julia is claiming that John caused her injuries for which John is legally responsible. Julia must be able to prove that

John violated some responsibility toward her, such as, that he drove his car in a negligent fashion and is therefore liable. She must also offer evidence as to the extent of injury she suffered. For example, she might show medical expenses and loss of income while injured and unable to work.

The defendant is the person who the plaintiff claims violated a responsibility owed to the plaintiff. At the trial John will try to introduce evidence that he was not negligent, or that Julia was also negligent, or that Julia was not injured to the extent she claims. The defendant may also wish to claim that the accident was, in fact, Julia's fault; therefore, she should be required to pay for his injuries. If so, he will file a counterclaim.

The judge has two central duties in the trial itself. He conducts the trial and makes decisions on the law. If there is no jury, the judge will be the fact-finder as well. The judge maintains order in the courtroom and rules on the admissibility of evidence. There are strict rules governing what testimony and documents may be presented to the trier of fact. These rules are designed to ensure that the evidence presented is reasonably reliable and that it is relevant to the issues in dispute. Evidence which is unreliable, perhaps because it is too far removed from the actual event or unrelated to the issues, might confuse or prejudice the jury; thus it wastes court time. The judge then explains to the jury what it is to do.

Right to Trial by Jury. In many cases, the right to trial by jury is guaranteed by both the federal and state constitutions. The Alabama Constitution, Article I, paragraph 6 provides, "That in all criminal prosecutions...in all prosecutions by indictment [the accused has a right to] a speedy public trial by an impartial jury of the county or district in which the offense was

committed...." Article I, paragraph 11 provides "That the right of trial by jury shall remain inviolate." This means that in all criminal cases and in civil cases, where the right to jury trial has been historically allowed, it cannot be interfered with by government.

Jury Roll. The *jury roll* (the list of people who will be called for jury duty) is selected by the jury commission. The Alabama statute which establishes the qualifications of jurors is Alabama Code Title 30, section 21 (1958) (Supp. 1974). This statute states, "... the jury commission shall place on the jury roll and in the jury box the names of all citizens of the county who are generally reported to be honest and intelligent and are esteemed in the community for their integrity, good characters and sound judgment."

Moreover, no one under 21, or who is a "habitual drunkard," or who due to illness is unfit to serve on juries may be called. Persons over 65 are not required to serve unless they so choose.

Several fundamental changes were made in the application of the statute in the landmark case of White v. Crook, U.S. Dist. Ct., Middle District of Alabama, 251 F. Supp. 401 (1966). In that case, a federal court held that the jury commission could not function in such a manner as to exclude most blacks from jury duty. Secondly, the court held that the state could not constitutionally exclude women from jury service as it had done prior to this case. In 1966 the Alabama Legislature added a section to the Code [Ala. Code Title 30, Section 21 (1)] which requires that women and men are to be added to jury rolls based on the same qualifications.

It should also be noted that people in certain occupations are excused from jury duty [Ala. Code Title 30, Section 3 (Supp. 1973)]. The judge may also excuse or postpone the service of any juror who offers a good excuse. [Ala. Code Title 30, Section 3, 4 (1958).]

Prior to a court session which will require jurors, the judge draws the required number of names from the jury roll. The sheriff sends each person a summons instructing him to report for jury duty on a certain date.

Grand and Petit Jury. When the jurors reach court, they are divided into groups from which the jurors for a particular trial are selected. There are two kinds of juries. One is the *grand* jury. The grand jury issues *indictments* (a statement that the grand jury has reviewed evidence against a criminal defendant and believes the case is strong enough to require that the accused be tried) and performs certain other statutory functions, such as overseeing the county jail system. The jury which hears the evidence at a trial is called a *petit* jury. Alabama still retains the historical common law of 12 on a jury. There are two methods of selecting the 12 people who will serve on a particular petit jury. One method always used in criminal cases and sometimes civil cases is known as the *struck jury*. The attorneys are given a list with an even number of names, and the lawyers take turns striking names from the list until only 12 names remain.

In the other method, the attorneys must challenge a juror to remove him or her from the jury. Each attorney is allowed to challenge a few jurors without giving a reason. Moreover, any number of jurors may be challenged for cause. Under Alabama Code Title 30, Section 55 (1958), there are 12 reasons which allow the attorney to demand a juror not be allowed to serve. These reasons include, for example, close relationship of the juror to a party in the case, some interest in the case by the juror, or the fact that a juror already has a fixed opinion about the case as to guilt or innocence.

Function of Jury. The jury's function is to listen to the evidence and determine the facts in a case. The jury members may consider all the testimony as well as the credibility and demeanor of the witnesses. For example, if Julia and John disagree about whether John was speeding at the time of the accident, the jurors would listen to all testimony of the parties and eye-witnesses and note all physical evidence such as skid marks, and then determine which version is accurate.

Steps in a Trial. The steps in a trial generally follow an established pattern. If the case is to be tried before a jury, the jury is first selected. The attorneys may make opening statements, explaining to the jury what each side expects to prove through the evidence. Next, the parties present their evidence. In our case, a civil damages case, the plaintiff will first present all her evidence. The plaintiff carries the burden of establishing that she has a complaint which the law will recognize against the defendant. In other words, the plaintiff must show that the injury she complains of arose from a violation of a legal obligation owed her by the defendant. If she does not meet this burden, the defendant is entitled to a *directed* verdict. When the plaintiff finishes, the defendant may present his evidence. He may present evidence showing that he did not do what the plaintiff claims he did, or he may try to show that the plaintiff was also at fault.

As each party presents a witness, the attorney asks the witness questions to elicit information about the fact in controversy. This is known as *direct examination*. When the attorney completes questioning his own witness, the attorney for the other side is entitled to *cross-examine* the witness. Under current court procedure, attorneys are allowed much more leeway on cross-examination than on direct examination. The theory is that if one

party calls a witness, then that party expects the witness to present favorable evidence for him and to vouch for the witness's character. On the other hand, in cross-examining the witness, the attorney hopes to show inconsistencies in the testimony, or that the witness might be mistaken, or that for some good reason the jury should not trust the witness's testimony.

When all the evidence by both parties has been presented, each attorney may make a closing argument to the jury. In the argument the attorney will try to sum up the evidence and explain how and why the evidence favors his or her side of the case.

At this point, the judge will charge the jury, explaining to the jurors what legal principles they should follow in deciding the issues in dispute. The jurors then go to a private room to consider the evidence. The jurors theoretically attempt to resolve disputed facts and, using these conclusions, render a verdict based on the judge's charge. All 12 jurors must agree on the verdict. They are not supposed to compromise among themselves. If the jurors cannot agree, the trial ends with a "hung" jury. When the jury reaches a verdict, they return to the courtroom to deliver their verdict to the judge and the parties.

The losing party may decide that, due to some aspect of the trial, the verdict should not stand. If so, that party may choose to appeal. The time allowed for the appeal and the court to which the appeal is taken are governed by law. The appealing party must set forth very clearly why the verdict should be overturned. The burden is on the appealing party (the appellant) to show where the error was made.

If the appellate court takes the case on appeal, it does not retry the case. Instead, it reviews the records including pleadings, transcripts of

the trial, and the proceedings at the trial level to see if an error was made. No new evidence may be introduced at the appellate level. Newly discovered evidence in a civil case is a basis for setting aside the verdict within a certain period after the original trial.

If the appellate court decides to overturn the verdict, several courses of action are possible. It may simply overturn the verdict, returning the parties to their pre-trial status; or it may remand the case (sending it back to the trial court with orders to enter a certain verdict or to carry out certain instructions, such as hearing more evidence on a particular point). A party may continue to appeal as long as he can find grounds, and perhaps of more importance, can afford to pay for it. Many litigants find the appellate process prohibitively expensive.

Legal Aid

In many states legal services are provided free of charge to indigent individuals who have civil, as opposed to criminal, legal problems. These free legal services are provided by "Legal Aid Societies" or "Legal Aid Clinics." Although they may take on many different forms in the various states, generally they are of two categories: legal aid programs provided for by the Federal Government under the Legal Services Corporation, and legal aid programs provided for by state or private funds. In many instances, local bar associations are involved in the actual operation of the programs. The basic idea behind the programs is to provide assistance to those citizens who cannot afford to pay for the services of a private attorney but who have need for legal services in civil matters such as consumer complaints, domestic problems, debtor/creditor problems, landlord/tenant disputes, and the like. Services are provided to indigents by competent attorneys who are employed full time by the legal services program.

CRIMINAL PROCEDURE

Felonies and Misdemeanors

Criminal offenses are divided into two major categories: felonies and misdemeanors. Felonies are generally those crimes considered more serious in nature. The classic definition of a felony is a crime punishable by more than one year and one day in prison. In the event that a person is convicted of a felony, even if the sentence is suspended, he loses the right to vote, to own a gun and to run for public office. He loses the opportunity of ever being a licensed doctor, dentist, CPA, engineer, lawyer, architect, realtor, osteopath, physical therapist, private detective, pharmacist, school teacher, barber, funeral director, masseur or stock broker. He can never obtain a job where he has to be bonded or licensed. He cannot enlist in any military service and he cannot work for the city, county, or federal government.

Lesser offenses are called misdemeanors. One example of a misdemeanor with which most people come in contact is a traffic violation. Misdemeanors are usually accompanied by smaller fines and short terms of imprisonment, and they are viewed by the public as less serious. Moreover, misdemeanors are not usually accompanied by the civil disabilities, such as loss of voting rights, which follows conviction for a felony.

A Crime is Committed. When a person is charged with a crime he must contend with the entire law enforcement structure. The original arrest (or summons

in the case of a minor traffic violation) will be made by a law enforcement officer. The duties of the officer toward the accused are discussed below.

The government has its own staff of attorneys to prepare and prosecute the case against the accused. At the local level this staff is known as the district attorney's office. A state has an attorney general, and the federal government has the justice department. This staff prepares the case against the defendant and prosecutes the case for the government at trial.

If the district attorney believes he has enough evidence to make a case against a defendant charged with a serious crime, this information is presented to the grand jury. The grand jury's function is to decide whether the evidence against the defendant is sufficient to justify a trial. If the grand jury decides there is enough evidence, it issues a *true bill*; and the defendant is *indicted* for the offense charged. If there is not enough evidence against the defendant, a *no bill* is issued and the defendant is discharged.

At the time of arrest, the accused person has a number of rights which must be observed by the arresting officer. First, the officer must have *probable cause* (good reasons) to believe that the person being arrested has committed a crime. Ordinarily this requires that the officer obtain a *warrant* from a judge or magistrate. This means that the officer presents his reasons to a judicial officer who agrees that the reasons are good ones and he authorizes the arrest. In some limited circumstances, a law enforcement officer can make an arrest without a warrant; for example, when he sees the act committed. These basic requirements are constitutionally guaranteed by the Fourth Amendment of the United States Constitution:

"The right of the people to be secure in their persons, homes,

papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Arrest. At the time of arrest, case law has recognized certain rights which the accused is entitled to know immediately upon arrest. These have become known as the Miranda warnings because the requirement was first stated in the case of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). In that case the accused was taken into a room and questioned by law enforcement officials. The U. S. Supreme Court held that when a person is accused, he must be told that he has the right to remain silent in order to avoid making self-incriminating statements, that any statement made by the accused may be used against him and that he is entitled to an attorney. If the accused makes any statement without having been informed of these rights, such statements may not be used by the prosecution. The accused may waive these rights only if he understands the rights and knowingly and intelligently gives them up.

Arraignment. When a person is arrested, he may be held in confinement until *arraignment*. An arraignment is the first time that any accused is allowed to answer to the charges brought against him.

Bail. There is often a long wait after arraignment before trail so the accused may wish to be released pending trial. The judge has the discretion to arrange for *bail*. Bail is a security bond designed to ensure that the accused will appear at trial. The judge sets the amount of bail depending on the seriousness of the offense and the trustworthiness of the accused.

In some cases, the accused will be released on the promise to show up at the trial. This is known as releasing a person on his own recognizance. It is unconstitutional to set excessively high bail.

In practice most people buy a bond from a bail bondsman. For a certain amount of money depending on several factors, such as the amount of the bail and the security the accused can put up, the bail bondsman promises to pay the full amount of the bail if the accused disappears before trial. Some people believe that the bail system unfairly discriminates against poor people who have little money to meet bail or nothing of sufficient value to secure a bond.

Pleabargaining. Another procedure which precedes the actual trial is known as *pleabargaining*. This means that the accused will be given a chance to plead guilty to a less serious offense than the one for which he is to be tried. There is much controversy about this procedure. The accused and his attorney may feel that the case against the accused is strong; therefore, it is not worth the risk to go to trial and risk a more severe sentence. The overcrowding of the criminal dockets makes it almost impossible to try every case, so courts and prosecutors may be happy not to have to spend the time at trial. On the other hand, it is easy to see how a defendant might be pressured to accept the certainty of a shorter sentence rather than risk conviction at trial even if he is innocent.

Constitutional Safeguards. At the trial the accused is entitled to certain safeguards of a constitutional nature. The first of these was originally established in the case of Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). In that case, Gideon was charged with burglary

(a felony) and convicted. At his trial he requested that the court appoint a lawyer to represent him because he could not afford to hire one. The court refused because under existing state case law the constitution had not been interpreted as requiring appointed counsel to ensure due process of law. The Sixth Amendment of the U. S. Constitution provides the right to counsel, so federal courts had been required to appoint counsel. Gideon felt that the requirement also applied to state proceedings through the Fourteenth Amendment. Writing for the majority, Justice Black said,

> "Reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."

Gideon had spent much time in jail. He became what is known as a jail-house lawyer, investigating for himself ways to prove that he did not receive a fair trial. The Supreme Court acted as a result of a letter Gideon wrote to the court explaining his situation.

The purpose of a criminal trial is different from a civil trial. In a criminal trial, the jury must believe that the defendant is guilty beyong a reasonable doubt. This means that the jurors must have no *reasonable* reservations about the defendant's guilt. Generally, a unanimous verdict is required to convict.

One important point about all trials, but of special importance in criminal trials, is the *privileged* relationship between a client and the attorney. Many things that the client tells the attorney are confidential, and the attorney cannot be forced to disclose them. It is a breach of

ethics for an attorney to tell confidential information.

The attorney's job in a criminal trial is to make sure that the defendant receives a fair trial. The attorney does not have to prove that his client is innocent, but he must raise a reasonable doubt in the minds of the jurors that the defendant committed the act in question.

The roles of the judge and jury are similar to those in a civil trial; however, there are some differences. The jury decides whether the defendant is innocent or guilty, and the judge usually may set the sentence within the limits established for the particular crime. In capital cases, prior to Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), the jury had to recommend the death sentence before the judge could sentence anyone to death. Furman v. Georgia did not say that capital punishment is unconstitutional *per se*, but that as applied it did discriminate. Now the door is open for states to draft and apply a constitutional capital punishment law. The Court held that the death sentence in the cases before them was cruel and unusual as applied. Some of the justices thought that the death penalty would violate the Eighth Amendment. Others pointed out that capital punishment was inflicted almost exclusively upon the poor, the black, and the uneducated. What is the purpose of criminal law? Is it to rehabilitate? Is it to punish? Is it to remove from society, by jail or execution, those who so misbehave?

CORRECTIONS

Corrections is that part of the legal system that attempts to improve the behavior of adult offenders and juvenile delinquents. Its functions occur after the criminal court has determined a person to be guilty of law violation. History indicates that society has always taken action aginst those who have broken its rules or laws. It has concluded this is the best way to protect and preserve itself. The logic is for society not to be constantly protecting itself from the same person(s) committing the same offense(s) over and over. Thus the basic purpose of the correction program is to reform the offender.

In this study you have become acquainted with the types of punishment that different cultures have used throughout the centuries. Some were extremely harsh and cruel while others appeared to be foolish and meaningless.

Crime and crime prevention have always been the concern of the community. What makes a criminal? Why does a person commit a crime? What is needed in order to promote a crime-free society? It is usually admitted that there seems to be no easy explanation as to why some individuals become criminals. The truth is that under certain circumstances some people will act and then you have "instant" crime.

The search for causes is important since prescribing corrective treatment depends upon an understanding of what caused that particular conduct in the first place. Today, we are deeply involved in examining what type of correction the offender should receive. Should it be punishment to fit the crime

or should it be corrective measures to fit the criminal? There are constant debates and differences of opinion concerning what is just punishment. For example, take a capital offense. Those in favor of the death penalty offer the following arguments: (1) It assists in preventing crimes by other members of society, (2) the person convicted is beyond hope, (3) policemen will be protected, (4) a life sentence would give the offender the opportunity to be paroled and to repeat his criminal behavior, and (5) long-term confinement is cruel and presents a danger to correctional officers.

Those against the death penalty claim that the following points argue against its usefulness: (1) Man cannot conceive of his own death, (2) many capital offenses are committed under impulse, (3) not many capital offenders are habitual criminals, and (4) it does not deter others.

Essentially, contemporary correction consists of the following: the jail system, courts, state and federal and a variety of community programs other than probation and parole (work-release, study-release, home furloughs, etc.). The value of these efforts to correct is being constantly studied.

PROBATION

Probation occurs when the convicted offender is formally placed under the supervision of court personnel, usually a probation officer. The time the offender serves under probation supervision averages about three years, though it may be shorter or longer. General practice is for the period not to exceed five years.

Some interesting facts regarding probation are:

1. More than half of the adult offenders in correctional caseloads are on probation.

2. Approximately 75 percent of all convictions result in probation.

3. The costs of probation are from 1/10 to 1/13 the cost of imprisonment.

4. The first probation law was passed by Massachusetts in 1878. Vermont was the next state to pass a probation law in 1898. Today all states have both adult and juvenile probation laws, including the federal system.

PAROLE

This occurs when a convicted criminal is released from prison before his sentence is completed. He is then placed on suspension and supervised for a period of time. If he does not violate the conditions of parole he will complete his sentence in this manner. If he does violate this agreement he may be returned to prison to complete his term in jail.

PARDON

A chief executive, governor of a state or president of the United States, grants a pardon which serves as an automatic release of the offender from prison and an excusal from his sentence. This was used quite frequently when the death sentence was imposed and there was reason to believe that the convicted party might be innocent.

COMMUNITY PROGRAMS

Work-Release/Study-Release. Under these programs convicted persons may be permitted to work or study within the community during the daytime. They are usually transported by prison bus to and from the place of work or the educational center. They are returned to prison at night.

Home Furloughs. This permits the convicted persons who have good behavior

records to receive leaves of absence from prison to visit their homes and families.

The major emphasis today as it relates to crime and punishment is concerned with understanding what causes the person to become a criminal, the best ways in which he can prevent crime from occurring and, finally, the most productive methods of correction. All of this requires constant attention and the best efforts from all of us. A civilization advances only when people want to correct problems and are eager to become involved in finding the right solutions. If we understand the issues then we are better prepared to make contributions that will be beneficial to everyone.

GLOSSARY

ACQUITTAL: A setting free from the charge of an offense by verdict, sentence or other legal process.

ADJACENT: To lie near; not distant; having a common border.

AGGRESSOR: One that begins a quarrel or an attack.

APPEAL: A legal proceeding by which a case is brought from a lower court to higher court for rehearing.

APPELLATE: Having the power to review the judgment of another court.

ARRAIGNMENT: Calling a prisoner before a court to hear the charges brought against him.

ARTICULATE: Able to speak well; well presented. To join together.

ASCERTAIN: To find out or learn with certainty.

ASSESS: To charge with a tax, fine, or other payment. To evaluate for taxation.

ASSESSMENT: The amount assessed.

ASSAULT: A threat to injure another person whether by word or deed under circumstances intended to produce fear.

ATONE: To make amends; to supply satisfaction for.

BAIL: A sum of money or a bond given to a court to guarantee the appearance of a prisoner in order to obtain his release from jail.

BAILMENT: The temporary transfer of personal property from one person to another with the understanding that it will be returned when the purpose of the transfer has been completed.

BATTERY: The unlawful beating or use of force upon a person without his consent.

BODKIN: A sharp, slender instrument for piercing holes.

BREACH: Breaking a law or the violation of a legal duty.

CANON: A rule or a body of rules of faith and practices passed by a church council.

CHARTER: A written instrument of contract (as a deed) executed in due form. A grant or guarantee of rights, or privileges from the sovereign power of a state or country.

CHASTISE: To inflict punishment as by whipping.

CITIZENRY: All the citiznes of a certain area.

CIVIL LAW: The system of law based on written statutes or codes rather than on court decisions. The term is also used to show that no criminal act or law is involved.

CLERGY: The body of men ordained to the service of God in the Christian church.

CODE: A systematic statement of a body of law. A system of principles or rules.

COMMON LAW: The system of law based on court decisions instead of laws passed by a legislature or similar body.

COMPENSATE: To make proper payment.

COMPENSATION: Payment.

COMPLEX: Difficult to understand, solve or explain.

CONFINEMENT: The state of being shut up or imprisoned.

CONSTITUTIONAL: In accordance with or authorized by the constitution of a state or society.

CONTRACT: A promise or a set of promises for which one is legally responsible.

CONVENED: To come together in a group.

COUNCIL: A governing body of a city, community, or corporation.

COVENANT: A written agreement or promise.

CREDITOR: One who gives credit in business matters, or one to whom money is owed.

CREED: A set of fundamental beliefs.

CULPRIT: One accused or guilty of a crime or fault.

DECREED: To command by decree. Decree - an order usually having the force of law.

DEFENDANT: A person required to make answer in a legal action or suit.

DENOUNCE: To inform against; to pronounce evil.

DEPUTY: A person who acts for another in the running of a public office.

GRIEVANCE: A wrong considered serious enough to make a complaint.

HERESIES: Acts or opinions in conflict with teachings of the church.

HORDE: A large number, crowd, or swarm.

HOSTILITY: Marked with unfirendliness or warfare.

HUMILIATION: To be made to feel inferior or to lower ones self pride.

HYSTERIA: Uncontrolled fear.

ILLICIT: Unlawful; not permitted.

IMMUNITY: Protected against; free from penalty.

IMPARTIAL: Not showing favor of one above another.

INDICT: To charge with a crime or an offense.

INDIGENT: A poor person; a person without property or money.

INHUMANE: Cruel; brutal.

INTANGIBLE: That which is nonphysical and not subject to being touched such as air, honesty, good will, etc.

INTERPRETER: One who explains or makes clear.

INTESTATE: The status of having died without leaving a will.

INTOLERANCE: Unwilling or unable to endure or bear.

JEOPARDY: Danger of death, loss or injury. The peril in which a person is placed when on trial for a crime.

JUDICIAL: Pertaining to courts of law or judges.

JURISDICTION: The legal authority of a court to try a case; power of those in authority.

LANDLORD: A person who owns and rents real estate.

LARCENY: The unlawful taking of person property. (Grand or petty according to value of item taken.)

LAY CITIZEN: One not trained or educated in a profession or special branch of knowledge.

LEEWAY: Additional space or time to permit greater freedom of action.

DIFFERENTIATION: To make a difference in treatment or favor.

DISCRETION: Individual choice or judgment.

DISCRIMINATE: To make a difference in treatment or favor.

DOCKET: A list of cases and the dates set for their trial.

EMETIC: Something given to someone to cause vomiting.

EMINENT DOMAIN: The power of a government to take private property for public use after paying the owner.

ENACT: To establish by law.

ENDOW: To furnish or equip, as with talents or natural gifts.

ESTATE: All property one owns or has an interest in.

EVICT: To legally remove a person (usually a tenant) from real property.

EXECUTIVE: An individual or a group responsible for directing the affairs of a government or a business.

EXPLOIT: To use meanly for one's own gain or advantage.

EXTERMINATE: Completely destroy living things.

FACTION: A group of people operating within, and often in opposition to, a larger group to gain its own way.

FELON: A person convicted of a felon

FELONY: A serious crime that requires a sentence to a federal or a state prison for a year or more.

FORESEEABLE: That which can be seen in advance or before it happens.

FORMATIVE: Pertaining to early development.

FRANCHISE: A special privilege given by the government to a particular person or people.

GALLOWS: A framework used to hang a convicted person.

GRAND JURY: A group of citizens, ranging from 12 to 24 in number, who listen to evidence presented by a prosecuting attorney and decide if criminal charges should be made against a person.

GRATUITOUS: Given without requirement of payment or return; free.

LEGISLATURE: A body of public officials that has the authority to make laws.

LENIENT: Not stern or severe; mild.

LESSEE: A tenant; the person who leases property from the owner.

LESSOR: A landlord; the person who owns and leases property to a tenant.

LIABILITY: Something that prevents success; a disadvantage.

LIABLE: Legally responsible.

LIBEL: A statement or picture that damages a person's reputation.

LIBERAL: Having beliefs or policies favoring reform; plentiful.

LICENSEE: A person who possess a license.

LIEN: A claim against property.

LITIGANT: A party to a lawsuit.

LITIGATION: The carrying on of a lawsuit.

MAGISTRATE: A public official with the power to manage and enforce the law.

MARTIAL LAW: A temporary control of land and people by the military.

MEAGER: Small; lacking in strength.

METALLURGIST: One who works with metals and alloys for the purpose of developing or improving them.

MIGRATE: The move from one country or region to settle in another.

MORALITY: Conforming to the standards of right or proper conduct; the quality of being righteous.

MUTINOUS: Showing qualities of rebellion or revolt.

NAUSEATE: To make sick at the stomach, often accompanied with vomiting.

NEGLIGENCE: The failure to use reasonable care to avoid accidents or injuries to self or others.

NOTORIOUS: Widely known and usually disapproved of.

OBSCENE: That which offends one's sense of decency.

ORDINANCE: An order or law of a city.

PARISH: The geographic area served by a church.

PENAL: Pertaining to punishment.

PENDING: Waiting to be settled.

PERJURY: Lying under oath.

PERSISTENT: Not quitting.

PERSONAL PROPERTY: A person's possessions that can be moved such as furniture, clothing, bicycle, etc.

PETTY: Minor; being less important.

PLAINTIFF: A person who brings a lawsuit.

PRECEDENT: A court decision that sets an example to be followed in similar cases.

PRESCRIBE: To set down as direction or rule to be followed.

PRESTIGE: Importance or respect given because of wealth or power.

PRESUMPTION: That which may be taken for granted to be true until proved to be untrue.

PROHIBITIVE: Preventing the sale, purchase, etc., of something.

PROPRIETOR: Owner; A person having exclusive title to anything.

REAL PROPERTY: All land and buildings which are held for life.

REFERRAL: The act or instance of referring.

RELINQUISH: To let go of; to give up.

REMAND: To send a case back to a lower court for further action.

RENDER: To give; to return.

SEDITION: Action which promotes discontent, intended to bring about the overthrow of a government.

SELF-INCRIMINATION: To imply the guilt or wrongdoing of oneself.

SEVERITY: The quality of being severe; harsh or cruel treatment.

SLANDER: Spoken words of a false nature, tending to damage another's reputation.

SMATTER: To talk of, study or use superficially.

SOVEREIGN: A person or governing body in whom power or authority is vested.

SUMMONS: A written notice to a person that he must appear in court on a specified day.

SUPREMACY: The state of being supreme.

SUPREME: Highest power or authority.

TABOO: Any restriction or ban founded on custom or social convention.

TANGIBLE: Descriptive of something which may be felt or touched.

TENANT: A person who rents real estate from the owner.

TERMINATION: The end; finish.

TESTATE: The status of having a will prepared before death.

TINKER: One who does repairing work of any kind.

TORT: Wrong done by one person to another.

TRANSCRIPT: A written copy.

TRESPASS: Any breaking of the law.

TRIBUNAL: A court.

UNAVAILING: Unsuccessful; futile.

VAGABOND: Tramp, one without a settled home.

VAGRANT: Tramp; one without a settled home.

VALID: Good; legally proper.

VENTURE: To proceed despite danger.

VERDICT: The decision of a jury concerning matters given to it in a trial.

WAGER: To make a bet.

WAIVE: To abandon a right or pivilege.

WARRANT: A written document issued by a judge authorizing the arrest of a person.

WARRANTY: A guarantee on land or goods made by the seller to the buyer.

BIBLIOGRAPHY

Allen, Carleton Kemp. *Law in the Making.* 5th ed. London: Oxford University Press, 1957.

Bartholomew, Paul C. *American Government Under the Constitution.* Rev. ed. Dubuque, Iowa: WM. C. Brown Co., 1947.

Bartholomew, Paul C. *Summaries of Leading Cases on the Constitution.* 9th ed. Totowa, New Jersey: Littlefield, Adams and Co., 1974.

Blatt, Dana L. and Norman S. Goldenberg, eds. *Casenote Legal Briefs: Civil Procedure.* Los Angeles, California: Casenotes Publishing Co., 1975.

Blatt, Dana L. and Norman S. Goldenberg, eds. *Casenote Legal Briefs: Torts.* Los Angeles, California: Casenotes Publishing Co., 1974.

Blaxland, George Cuthbert. *"Mayflower".* New York: Books for Libraries Press, 1970.

Bradford, William. *"Mort's Relation".* Ann Harbor, Michigan: Michigan University Press, 1966.

Bradford, William. *History of Plymouth Plantation, 1620-1647.* 2 vols. New York: Russell and Russell, 1912.

Bradford, William. *Bradford's History of Plymouth Plantation, 1606-1646,* ed. New York: Barnes and Noble, Inc., 1946.

Brierly, J. L. *Anson's Law of Contract.* 19th ed. London: Oxford University Press, 1947.

Carpenter, William Seal. *Foundation of Modern Jurisprudence.* New York: Appleton-Century-Crofts, Inc., 1958.

Channing, Edward. *A History of the United States.* 3 vols. The Macmillan Co., 1912.

Chumbley, George Lewis. *Colonial Justice in Virginia.* Richmond: The Dietz Press, 1938.

Cribbet, John E., William F. Fritz and Corwin W. Johnson. *Property: Cases and Materials.* 3rd ed. Mineola, New York: The Foundation Press, Inc., 1972.

Field, Richard H. and Benjamin Kaplan. *Materials for a Basic Course in Civil Procedure.* 3rd ed. Mineola, New York: The Foundation Press, Inc., 1973.

Findlay, Bruce Allyn and Esther Blair Findlay. *Your Rugged Constitution.* Stanford, California: Stanford University Press, 1951.

Goldenberg, Norman S. and Dana L. Blatt. *Casenote Legal Briefs: Contracts.* Los Angeles, California: Casenotes Publishing Co., 1974.

Hargraves, A. D. *Introduction to Land Law.* 2nd ed. London: Berkshire Printing Co., 1944.

Howard, A. E. Dick. *Magna Carta: Text and Commentary.* Charlottesville, Virginia: University Press of Virginia, 1964.

Keeton, Page and Robert E. Keeton. *Cases and Materials on the Law of Torts.* St. Paul, Minnesota: West Publishing Co., 1971.

Kempin, Frederick G., Jr., *Historical Introduction to Anglo-American Law.* 2nd ed. St. Paul, Minnesota: West Publishing Co., 1973.

Kingsbury, Susan Myra and Herbert Levi Osgood. *The Records of the Virginia Company of London.* vol I. Washington, D. C.: Government Printing Office, 1906.

Lawton, Mary C. and Joseph Fontana. *These Unalienable Rights: A Handbook of the Bill of Rights.* Federal Bar Association.

Lockhart, William, Yale Kamisar and Jesse H. Choper. *Constitutional Law: Cases-Comments-Questions.* 3rd ed. St. Paul, Minnesota: West Publishing Co., 1970.

Lockhart, William, Yale Kamisar and Jesse H. Choper. *Constitutional Law: Cases-Comments-Questions.* 3rd ed. St. Paul, Minnesota: West Publishing Co., 1973.

Maitland, F. W. *The Form of Action at Common Law,* ed. A. H. Clayton and W. J. Whittaker. Cambridge, Great Britian: Cambridge University Press, 1948.

Mueller, Addison and Arthur I. Rosett. *Contract Law and Its Application.* Mineola, New York: The Foundation Press, Inc., 1971.

Munro, William Bennett. *The Government of the United States.* New York: The Macmillan Co., 1946.

Muzzy, David Saville. *The United States of America.* vol I. Boston: Ginn and Co., 1922.

Paton, George Whitecross. *Jurisprudence.* 2nd ed. London: Oxford University Press, 1951.

Paulsen, Monrad G. and Charles H. Whitebread. *Juvenile Law and Procedure.* Reno, Nevada: National Council of Juvenile Court Judges, 1974.

Ross, Martin J. *Handbook of Everyday Law.* Rev. ed. Greenwich, Connecticut: Fawcett Publications, Inc. 1967.

Rutter, William A. *Contracts.* 7th ed. Gardena, California: Gilbert Law Summaries, 1971.

Rutter, William A. *Torts.* 9th ed. Gardena, California: Gilbert Law Summaries, 1972.

Rutter, William A. *Real Property I.* 5th ed. Gardena, California: Gilbert Law Summaries, 1973.

Rutter, William A. *Real Property II.* 4th ed. Gardena, California: Gilbert Law Summaries, 1973.

Schwartz, Bernard. *The Law in America.* New York: American Heritage Publishing Co., 1974.

Smith, Bradford. *Bradford of Plymouth.* Philadelphia: J. B. Lippincott Co., 1951.

Smith, Chester H. *Constitutional Law.* Rev. ed. St. Paul, Minnesota: West Publishing Co., 1969.

Smith, Chester H. *Torts.* Rev. ed. St. Paul, Minnesota: West Publishing Co., 1969.

Smith, Chester H. *Contracts.* Rev. ed. St. Paul, Minnesota: West Publishing Co., 1969.

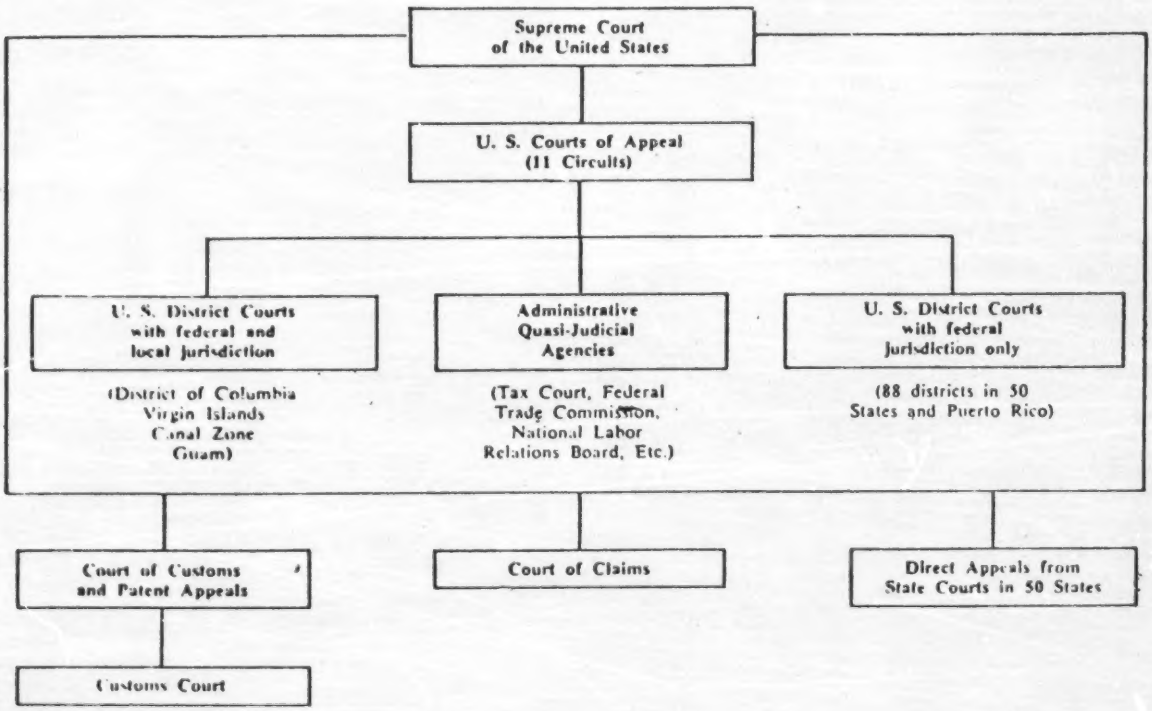
Usher, Roland G. *The Pilgrims and Their History.* New York: The Macmillan Co., 1918.

Weinstein, Noah. *Legal Rights of Children.* Reno, Nevada: National Council of Juvenile Court Judges, 1974.

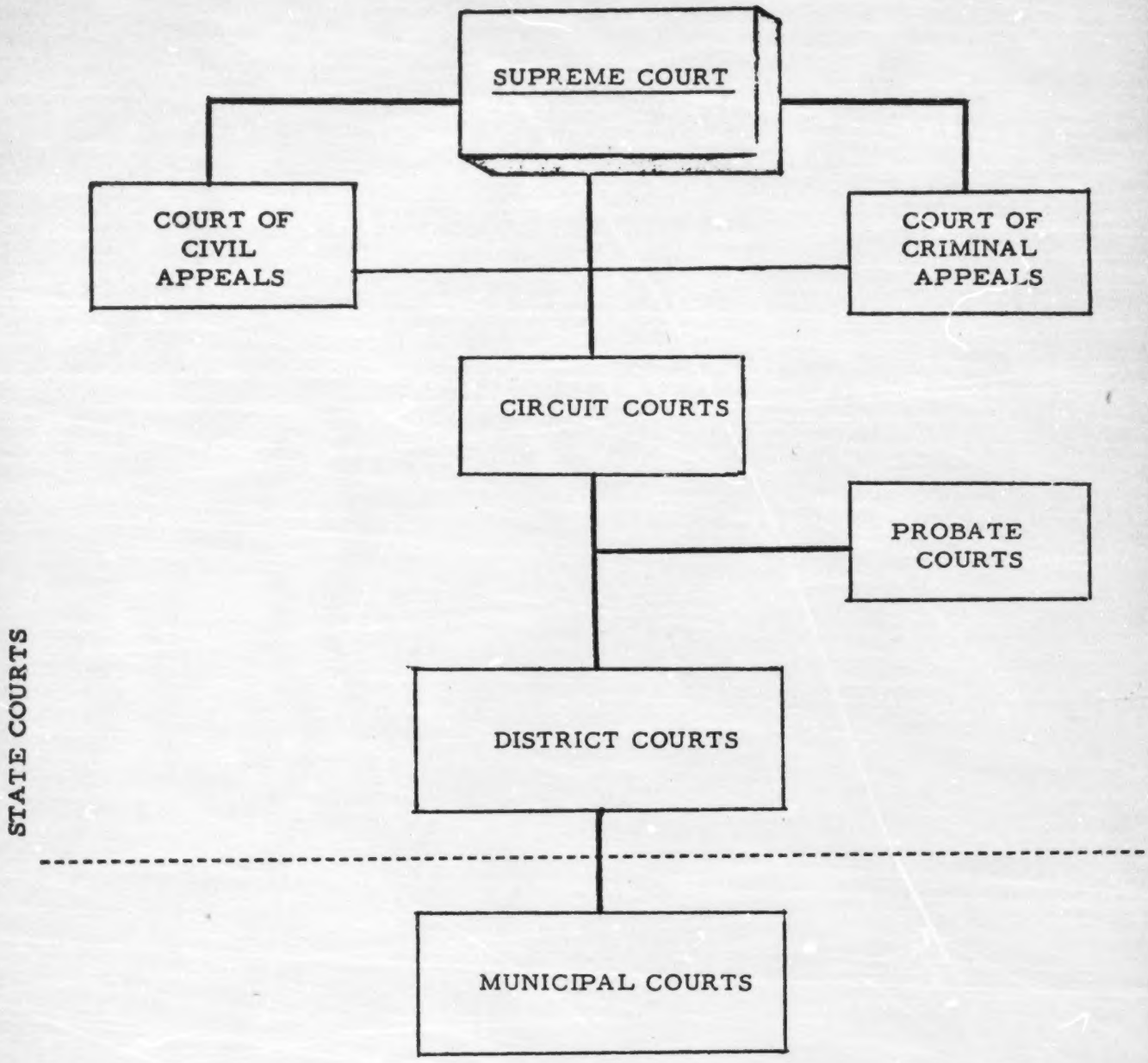
Wormser, Rene A. *The Story of the Law and the Men Who Made It.* New York: Simon and Schuster, 1962.

ADDENDUM

FEDERAL JUDICIAL SYSTEM


Supreme Court of the United States
U. S. Courts of Appeal (11 Circuits)
U. S. District Courts with federal and local jurisdiction
(District of Columbia Virgin Islands Canal Zone Guam)
Administrative Quasi-Judicial Agencies
(Tax Court, Federal Trade Commission, National Labor Relations Board, Etc.)
U. S. District Courts with federal jurisdiction only
(88 districts in 50 States and Puerto Rico)
Court of Customs and Patent Appeals
Customs Court
Court of Claims
Direct Appeals from State Courts in 50 States

ALABAMA COURT SYSTEM
UNDER JUDICIAL ARTICLE



Received in office day of

19

Sheriff

Executed by serving cop

of the within Summons and Complaint on

Defendant this the day of

19

Sheriff

No.

Name John Jones

Address 900 Dexter Avenue
Montgomery, Alabama

Plaintiff

vs.

Name Richard Roe

Address 100 Adams Avenue
Montgomery, Alabama

Defendant

CIRCUIT COURT

OF MONTGOMERY COUNTY

Fall Term, 19 75

SUMMONS AND COMPLAINT

Filed in office this day of

A.D. 19

Clerk.

Herman H. Hamilton, Jr.,

Plaintiff's Attorney

Form # 105-275

SUMMONS

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY,
ALABAMA

John Jones,

Plaintiff

CIVIL ACTION NO._____

VS

Richard Roe,
100 Adams Avenue
Montgomery, Alabama

Defendant

SUMMONS

To Any Sheriff or any person authorized by Rule 4 (a) (3) of the Alabama Rules of Civil Procedure to effect service in the State of Alabama

You are hereby commanded to serve this summons and a copy of the complaint in this action upon defendant.

Each defendant is required to serve a copy of a written answer to the complaint upon Herman H. Hamilton, Jr.

plaintiff's attorney, whose address is 57 Adams Avenue, Montgomery, Alabama

within thirty (30) days after service of this summons excluding the day of service of the summons and to file the original of said written answer with the Clerk of this Court at the time of service of the answer upon the Attorney of Record for the Plaintiff or within a reasonable time thereafter. If any defendant fails to do so, a judgment by default may be entered against that defendant for the relief claimed in the complaint.

/s/ A. Clerk
Clerk of Court

Dated July 10, 1975

COMPLAINT

Count I

1. Defendant, on or about January 1, 1974, executed and delivered to Plaintiff a promissory note whereby Defendant promised to pay to Plaintiff or order on May 1, 1975, the sum of Ten Thousand Dollars ($10,000), with interest thereon at the rate of eight percent per annum, and agreed to pay a reasonable attorney's fee for collection.

2. Defendant owes to Plaintiff Ten Thousand Dollars ($10,000) that is due on said note, and interest.

WHEREFORE, Plaintiff demands judgment against Defendant for the sum of Ten Thousand Dollars ($10,000), interest, attorney's fees, and costs.

Herman H. Hamilton, Jr.
Attorney for Plaintiff

Of Counsel:

Capell, Howard, Knabe & Cobbs, P. A.
57 Adams Avenue
Montgomery, Alabama

Plaintiff demands trial by jury of this cause.

Attorney for Plaintiff

CORPORATION WARRANTY DEED, JOINTLY FOR LIFE WITH REMAINDER TO SURVIVOR

THE STATE OF ALABAMA
MONTGOMERY COUNTY.

KNOW ALL MEN BY THESE PRESENTS that in consideration of One hundred DOLLARS and other valuable considerations to the undersigned GRANTOR in hand paid by the GRANTEES herein, the receipt whereof, is acknowledged Warlan Corporation, a corporation,

a corporation (herein referred to as GRANTOR), does hereby GRANT, BARGAIN, SELL and CONVEY unto Kathleen C. Hamilton and Herman H. Hamilton, Jr.

(herein referred to as GRANTEES) and their assigns or to the survivor of them, his or her heirs and assigns, the following described Real Estate, situated in the County of Montgomery and State of Alabama, to-wit:

Lot 3, Block 6, according to the Map of Hillwood Plat No. 3, as said Map appears of record in the office of the Judge of Probate of Montgomery County, Alabama, in Plat Book 18, at page 210.

This conveyance is made subject to all easements, restrictions, limitations and reservations appearing of record which affect said property.

Deed Tax 9.00

JAN 4 1965

JAN 4 1965

JAN 4 1965

JAN 4 10 55 AM 1965

TO HAVE AND TO HOLD, the aforegranted premises to the said GRANTEES, share and share alike during their joint lives, with full right, power and authority to them jointly to mortgage, sell or convey said property and pass a fee simple title thereto, but upon the death of either of them if said property has not theretofore been disposed of, a fee simple title to said property shall vest in the survivor of them and in the heirs and assigns of such survivor FOREVER.

And Grantor does covenant with the said Kathleen C. Hamilton and Herman H. Hamilton, Jr./ their heirs and assigns, that it is lawfully seized in fee simple of the aforementioned premises except as herein above provided; that they are free from all encumbrances; that it has a good right to sell and convey the same to the said Kathleen C. Hamilton and Herman H. Hamilton/ their heirs and assigns, and that Grantor will WARRANT AND DEFEND the premises to the said Kathleen C. Hamilton and Herman H. Hamilton, Jr., their heirs and assigns forever, against the lawful claims and demands of all persons, except as herein above provided.

IN WITNESS WHEREOF, Warlan Corporation, a corporation, has caused this instrument to be executed by Paul C. Corwin, its duly authorized president and its corporate seal of said corporation to be hereunto affixed and attested by Joe L. Coleman its duly authorized secretary this 24 day of Dec 1964.

ATTEST:
Joe L. Coleman
Its Secretary

WARLAN CORPORATION
BY Paul C. Corwin
Its President

STATE of ALABAMA
Montgomery COUNTY.

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that Paul C. Corwin and Joe L. Coleman, whose names as president and secretary of Warlan Corporation, a corporation, are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 28 day of Dec 1964.

Notary Public

FOR RECORDING ONLY

MORTGAGE

STATE OF ALABAMA, MONTGOMERY COUNTY

KNOW ALL MEN BY THESE PRESENTS: THAT WHEREAS John Doe, is

justly indebted to Richard Roe

, hereinafter called "Mortgagor," in the principal sum of Ten Thousand and No/100 ($10, 000. 00) - - - - - - - - - - DOLLARS, with interest thereon at eight percent per annum, as evidenced by promissory note, bearing even date herewith and payable as follows, to-wit:

Principal and interest due one year from date.

NOW, in order to secure the prompt payment of said note, when due, the said John Doe and wife, Mary Doe, hereinafter called "Mortgagor," for and in consideration of the premises, and the sum of Five Dollars to the undersigned this day in hand paid by the said Mortgagee, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to the said Mortgagee, his heirs and assigns, the following described real estate lying and being situated in Montgomery County, State of Alabama, to-wit:

Lot 1, Block A, Blackacre Subdivision, as the plat thereof appears of record in the Office of the Judge of Probate of Montgomery County, Alabama in Plat Book A, at page 3.

TO HAVE AND TO HOLD the aforegranted premises, together with the improvements and appurtenances thereunto belonging, unto the said Mortgagee his heirs and assigns FOREVER.

And said Mortgagor do hereby covenant with the said Mortgagee, his heirs and assigns, that Mortgagor are lawfully seized in fee of said premises; that they are free of and from all encumbrances; and that Mortgagor will warrant and forever defend the same against the lawful claims and demands of all persons.

BUT THIS CONVEYANCE IS MADE UPON THE FOLLOWING CONDITIONS, NEVERTHELESS, that is to say: If Mortgagor shall well and truly pay, or cause to be paid, the said note, and each and all of them, and each and every installment thereof, and interest thereon, when due, then this conveyance shall become null and void. But should Mortgagor fail to pay said note or either or any of them, or any installment thereof at maturity, then all of said indebtedness shall become due and payable at once, whereupon the said Mortgagee, his heirs, assigns, personal representatives, agents or attorneys, are hereby authorized and empowered to sell the said property hereby conveyed at auction for cash, at the Montgomery County Court House Door (Washington Street Entrance) in the City of Montgomery, Alabama, first having given notice thereof for three (3) weeks by publication in any newspaper then published in said City, and execute proper conveyance to the purchaser, and out of the proceeds of said sale the Mortgagee shall first pay all expenses incident thereto, together with a reasonable attorney's fee, then retain enough to pay said note and interest thereon, and any sums advanced by Mortgagee for delinquent taxes, assessments or insurance premiums, and the balance, if any, pay over to the Mortgagor.

In the event of such sale, the said Mortgagee, his heirs, assigns, personal representatives, agents or attorneys are hereby authorized and empowered to purchase the said property the same as if they were strangers to this conveyance, and the auctioneer or person making the sale is hereby empowered and directed to make and execute a deed to the purchaser in the name of the Mortgagor.

And it is also agreed that in case the Mortgagee, herein, his heirs, assigns or personal representatives, see fit to foreclose this mortgage in a court having jurisdiction thereof, Mortgagor will pay a reasonable attorney's fee therefor, which fee shall be and constitute a part of the debt hereby secured.

Mortgagor further represent and declare to said Mortgagee that the title to said real estate is in Mortgagor own right, and that the representations herein made as to the title and encumbrances are so made with the intent and for the purpose of inducing this loan.

Mortgagor further specially waive all exemptions which Mortgagor now or hereinafter may be entitled to under the Constitution and Laws of the State of Alabama in regard to the collection of the above debt.

Mortgagor further agree to keep said property insured against fire and windstorm in good and responsible companies acceptable to Mortgagee for not less than $ 10, 000 and have each such policy payable to said Mortgagee, as his interest may appear in said property, and deliver the same to Mortgagee; and should Mortgagor fail to insure said property, then Mortgagee is hereby authorized to do so, and the premiums so paid by Mortgagee shall be and constitute a part of the debt secured hereby.

The Mortgagor herein agree to pay all taxes and assessments, general or special, levied upon the real estate herein conveyed before the same become delinquent; should Mortgagor fail to pay any of such taxes or assessments, then Mortgagee is authorized to do so, and any such payments shall thereupon constitute a part of the debt secured hereby.

And it is further understood that should the Mortgagor fail to pay said taxes and assessments, or insure the property, as hereinabove stipulated, the Mortgagee may do so, and thereupon declare the whole debt secured by this mortgage to be due and payable, and proceed to foreclose at once, as hereinabove provided with respect to foreclosure of this mortgage.

IN TESTIMONY WHEREOF, Mortgagor, have hereunto set their hand and affixed their seal this 1st day of July, 19 75.

(L. S.) John Doe

(L. S.) John Doe

(L. S.) Mary Doe

(L. S.) Mary Doe

STATE OF ALABAMA, MONTGOMERY COUNTY

I, the undersigned, a Notary Public in and for said State and County hereby certify that John Doe and wife, Mary Doe whose name are signed to the foregoing mortgage, and who are known to me, acknowledged before me on this day that, being informed of the contents of this mortgage, they executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 1st day of July, 19 75.

A Notary Public
Notary Public.

THIS DEED WAS PREPARED BY

Herman H. Hamilton, Jr.

87 Adams Avenue
Montgomery, Alabama

FOR RECORDING ONLY

No. 130—CITY LEASE—Revised June 1, 1930—5M—8-30—Printed and for sale by The Brown Printing Co., Montgomery, Ala.

State of Alabama,

Montgomery County

THIS LEASE, made this 1st day of July, 19 75 by and between John Doe hereinafter called Lessor, and Richard Roe hereinafter called Lessee, WITNESSETH:

Lessor does hereby let and lease to Lessee the following premises in the City of Montgomery, Alabama viz: 1000 Lake Avenue, for occupation as a residence and not otherwise for and during the term of one year, to-wit: from the 1st day of July, 1975, to the 30th day of June, 19 76 and covenants to keep Lessee in quiet possession of the premises during said term provided Lessee shall comply with all the stipulations of this lease:

In consideration whereof Lessee agrees to pay Lessor $ 100.00 in advance on the first day of each month, being at the rate of $ 1,200.00 per annum, as evidenced by promissory notes bearing even date herewith and marked "subject to lease of even date."

Lessee agrees not to sublet the property, or any portion thereof or assign this lease, without the written consent of Lessor; to permit no waste of the property, but, on the contrary to take good care of same; and upon termination of this lease, to surrender possession of same without notice, in as good condition as at the commencement of the term, or as they may be put in during the term, as reasonable use and wear thereof will permit.

Lessee agrees to comply with all laws and city ordinances affecting the use or occupation of the premises hereby leased, and to fully relieve Lessor from any compliance therewith, or liability for violation thereof; to pay all charges for water, light, electricity and gas used on the premises during the term. Lessee agrees to take proper care of and protect said property from damage and shall be accountable for failure to do so. Lessee shall replace all broken glass, replace all keys or locks lost or broken and keep property in sanitary condition.

Lessor is under no duty to make any repairs except as hereinafter provided and Lessee agrees that Lessor shall not be liable for any damage caused by failure to make any repairs.

Lessee agrees not to hold Lessor liable for the breakage or leakage of water pipes above ground, nor for stoppage of waste pipes or sewers above ground but on the contrary to repair such breakage or leakage and to unstop such waste pipes or sewers at his own expense. Lessor agrees to provide necessary stop and waste but shall not be required to provide a water key. Lessor agrees to repair underground pipes and to relieve stoppage of same after reasonable notice from tenant, if due to natural causes or deterioration, provided, however, that Lessor shall not be responsible for same if caused by carelessness, neglect or improper use of tenant. In case stoppage or breakage of underground pipe is caused by tenant he agrees to pay for the necessary repairs. Lessor shall not be liable for any damage for failure to make such repairs.

Lessee hereby declares that the furniture or other property which he or she will use in said premises, is his or her own property and is not encumbered, and is pledged as security for the payment of rent and other charges due under this lease.

Lessee agrees to pay a reasonable attorney's fee and all costs if it becomes necessary for Lessor to employ an attorney to collect any of the rent agreed to be paid or to enforce performance of any of the provisions of this lease; and Lessee expressly waives all exemptions secured to Lessee under the laws of the State of Alabama or of any State in the United States as against the collection of any debt herein or hereby incurred or secured. Lessee hereby further covenants that if any default is made in the payment of said rent or any part thereof, at the time above specified, or if default be made in the performance of any of the covenants or agreements herein contained, the said lease, at the option of the Lessor, shall wholly cease and terminate, and said Lessor shall and may re-enter the said premises and remove all persons and property therefrom; and the said Lessee hereby expressly waives the service of any notice of intention to re-enter, notice to terminate the tenancy, notice to quit or demand for possession.

It is agreed that if Lessee shall fail to pay any one of the above described notes or installments of rent at maturity or fail to perform any of the provisions of this lease, then, at the election of the Lessor, all of the remaining notes or installments shall at once become due and payable and Lessor may treat them as due and payable without notice to Lessee. Lessee hereby waives notice of any default of this contract.

It is further agreed that in the event Lessee shall be adjudged a bankrupt during the term of this lease the rent for the whole term of this lease shall be immediately due and payable and Lessor may without notice or demand proceed to enforce the collection of same. Lessee agrees to claim full exemptions in the event of bankruptcy. Lessee hereby appoints Lessor as his true and lawful attorney in fact to claim and collect Lessee's said exemptions in the event Lessee fails to claim same and to apply same on the payment of rent and other charges due under this lease, and Lessee hereby assigns to Lessor so much of said exemptions as will pay the rent due under this lease and all other charges.

It is agreed that should Lessee during the term of this lease undertake to remove his property situated in the premises without Lessor's written permission the rent for the whole term of this lease shall at the option of the Lessor become due and payable and Lessor may proceed to enforce the lien for said rent as provided by law.

It is mutually agreed that if the premises are made wholly untenantable during the term by fire or other casualty without Lessee's fault, Lessee shall not thereafter be liable for the payment of rent unless Lessor within a reasonable time restores the property to substantially the same condition as just previous to such fire or other casualty; provided, however, Lessor, in order to hold Lessee must within thirty days after the fire or other casualty give Lessee notice in writing of his intention to restore the premises, but rent shall cease during the period said premises remain untenantable.

It is further agreed by and between the parties to this contract that no alterations, repairs, changes or improvements are to be made in, or to the premises herewith leased, without the consent in writing of the Lessor, except such as are necessary for the proper care and maintenance of the premises.

It is further understood and agreed that the Lessor shall not be liable for any damage that may occur on account of any defect of said building or premises, or from fire, rain, wind or any other cause.

Lessee agrees that Lessor shall have the right to attach a "For Rent" card on the premises and to show the premises to any person desiring to rent at any time within three months prior to the expiration of this lease and to attach a "For Sale" card and show the premises to any person desiring to purchase at any time during the term of this lease.

Lessor agrees to make necessary repairs to the roof after reasonable notice from Lessee provided, however, that Lessor shall not be liable for any loss or damage by failure or delay to make such repairs.

Lessee agrees to absolve Lessor from personal responsibility in the event the occupant of said premises at the commencement of the term of this lease fails or refuses to surrender and vacate to Lessee until Lessor has been given a reasonable time to lawfully regain possession of said premises.

Acceptance of rent by the Lessor from any assignee, sub-tenant, grantee or successor in interest to the Lessee with or without notice shall not relieve the Lessee from his obligation to pay the rent or other charges herein provided for.

It is agreed that this written instrument embodies the whole agreement of the parties.

The parties agree that the words Lessor and Lessee, wherever used in this lease, include heirs, devisees, legatees, executors, administrators, legal representatives, successors or assigns of the Lessor and Lessee respectively as if each time fully expressed.

The failure of the Lessor to insist upon strict performance of any of the covenants or conditions of this lease or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment of any such covenants, conditions or options but the same shall be and remain in full force and effect.

It is agreed that if the leased premises shall be abandoned or become vacant during the term of this lease without the Lessee having paid in full the rent for the entire time then and in such case the Lessor shall have the right at his option to take possession of the leased premises and to let the same as the agent of the Lessee and apply the proceeds received from such letting towards the payment of the rent due by Lessee under this lease and such re-entering and re-letting shall not discharge the Lessee from liability for rent or other charges, nor from any other obligations under the terms of this lease, or at the option of the Lessor the rent for the entire term shall at once become due and payable and the Lessor may proceed to the collection of rent for the entire term as if by the terms of this lease the entire rent for the entire term should be made payable in advance, or the Lessor may at his option re-enter the leased premises and annul and terminate this lease. These provisions, however, are not to be construed as limiting the Lessor's legal rights but are in addition to such existing rights.

Lessee is required to make a deposit of $ 100.00 and acknowledges receipt of 2 keys. Said deposit is to be returned to Lessee at the time Lessee surrenders possession of the premises and returns said keys. The cost of any key not returned shall be deducted from the deposit.

Lessee agrees to comply with the provisions of the standard fire insurance policy.

IN WITNESS WHEREOF the respective parties have hereunto set their hands and seals on this the 1st day of July, 19 75.

ATTEST: Pete Miller

_____ (L. S.)
Lessor

_____ (L. S.)
Lessee

_____ (L. S.)

Case No._____

THE STATE OF ALABAMA
CALHOUN COUNTY
CALHOUN COUNTY COURT

SUBPOENA—ORIGINAL

_____

_____

vs.

_____

_____

TO ANY SHERIFF OF THE STATE OF ALABAMA:

At the instance of the_____ you are hereby commanded to summon

_____

_____

_____

to appear at the present term of the Calhoun County Court on

_____19____, at_____M.

and to continue from day to day thereafter until legally discharged by due process of law, and to give evidence and speak the truth in the above styled cause, and make return of this writ, as to how you have executed the same.

Witness my hand this_____

M. S. NELSON, Clerk

Executed by leaving a copy of this Subpoena with the above named witness.

Witness my hand this_____19____

_____Sheriff

By_____Deputy Sheriff

No._____

WARRANT

THE STATE

vs.

_____

_____

_____

_____

IN THE

CALHOUN COUNTY COURT

Bond fixed at $_____

_____
Judge

Executed by arresting the defendant,

_____

and releasing _____ on bond (or)

confining _____ in County jail.

This _____ day of _____ 19___

_____
Sheriff

By _____
Deputy Sheriff

COST

SHERIFF'S:

Arrest	$_____
Bond	$_____
Guard	$_____
Witness Subp.	$_____
Mileage	$_____
Seizure	$_____
Search Warrant	$_____
Finger Print	$_____
_____	$_____
TOTAL SHERIFF'S	$_____

COURT:

Fair Trial Tax	$_____
Judge's	$_____
Clerk's	$_____
Solicitor's	$_____
Witness Fees	$_____
_____	$_____
TOTAL COST	$_____

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COMPLAINT AND WARRANT CC-1

THE STATE OF ALABAMA
CALHOUN COUNTY

Before me. Judge Clerk of Calhoun County Court, personally appeared _____

_____

who, being duly sworn, deposes and says he has probable cause for believing, and does believe that in said State and County, and before making this affidavit _____

with intent to defraud did obtain from _____

merchandise or cash of the value of $_____ by means of a check (s) for $_____ drawn by said defendant on the _____ Bank of _____

_____ knowing at the time that the maker did not have sufficient funds in said bank to cover said check(s), against the peace and dignity of the State of Alabama.

_____

Sworn to and subscribed before me, this _____ day of _____ 19____

_____
Judge - Clerk of Calhoun County Court

THE STATE OF ALABAMA
CALHOUN COUNTY

TO ANY LAWFUL OFFICER OF THE STATE OF ALABAMA:

You are hereby commanded to arrest _____

_____

and bring _____ before the Calhoun County Court, on the _____ day of _____ 19____ to answer to the State of Alabama on a charge of: GIVING CHECK(S) WITH INTENT TO DEFRAUD

_____

_____

_____

_____

_____

against the peace and dignity of the State of Alabama, preferred by _____

_____

Witness my hand this _____ day of _____ 19____

_____
Judge - Clerk of Calhoun County Court

Witnesses for the State _____

_____

_____

Witnesses for the Defendant _____

_____

_____

_____

No._____

WARRANT

THE STATE

vs.

John Doe
Rt 2 Box 40
Any Town, Alabama

IN THE
COUNTY COURT OF
CALHOUN COUNTY

Bond fixed at $ 200.00

_____
Judge

Executed by arresting the defendant,

_____

and releasing _____ on bond (or)

confining _____ in County jail.

This _____ day of _____ 19____

_____
STATE TROOPER

_____
SHERIFF

By _____
DEPUTY SHERIFF

COST

SHERIFF'S:	
Arrest	$_____
Bond	$_____
Guard	$_____
Witness Subp.	$_____
Mileage	$_____
Seizure	$_____
Search Warrant	$_____
Finger Print	$_____
_____	$_____
TOTAL SHERIFF'S	$_____
COURT:	
Fair Trial Tax	$_____
Judge's	$_____
Clerk's	$_____
Solicitor's	$_____
Witness Fees	$_____
STATE TROOPER-Arrest	$_____
GAME WARDEN-Arrest	$_____
GAME WARDEN-Bond	$_____
CONSTABLE-Arrest	$_____
JUSTICE of the PEACE	$_____
_____	$_____
TOTAL COST	$_____

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COMPLAINT AND WARRANT CC-4 Higginbotham, Inc.

The State of Alabama
CALHOUN COUNTY

Before me, W. C. Daniel, Judge of County Court of Calhoun County, personally appeared MARy Roe

who, being duly sworn, deposes and says he has probable cause for believing, and does believe that in said State and County, and before making this affidavit John Doe Did ASSAULT And Bat AFFIANT

against the peace and dignity of the State of Alabama.

X

Sworn to and subscribed before me, this 21 day of July 1975

Judge - Clerk of County Court of Calhoun County

The State of Alabama
CALHOUN COUNTY

TO ANY LAWFUL OFFICER OF THE STATE OF ALABAMA:

You are hereby commanded to arrest John Doe

and bring him before the County Court of Calhoun County on the 1st day of August 1975 to answer to the State of Alabama on a charge of ASSAULT And BATTERY

against the peace and dignity of the State of Alabama, preferred by MARy Roe

Witness my hand this 21 day of July 1975

Judge - Clerk of County Court of Calhoun County

Witnesses for the State MARY Roe
John Jones

Witnesses for the Defendant

No. _____

WARRANT

THE STATE

vs.

IN THE

Calhoun County Court

Bond fixed at $ _____

_____ Judge

Executed by arresting the defendant,

_____

and releasing _____ on bond (or)

confining _____ in County jail.

This _____ day of _____ 19____

_____ STATE TROOPER

_____ SHERIFF

By _____ DEPUTY SHERIFF

COST

SHERIFF'S:	
Arrest	$_____
Bond	$_____
Guard	$_____
Witness Subp.	$_____
Mileage	$_____
Seizure	$_____
Search Warrant	$_____
Finger Print	$_____
_____	$_____
TOTAL SHERIFF'S	$_____
COURT:	
Fair Trial Tax	$_____
Judge's	$_____
Clerk's	$_____
Solicitor's	$_____
Witness Fees	$_____
STATE TROOPER—Arrest	$_____
GAME WARDEN—Arrest	$_____
GAME WARDEN—Bond	$_____
CONSTABLE—Arrest	$_____
P.O.E. FUND	$_____
JUSTICE of the PEACE	$_____
_____	$_____
TOTAL COST	$_____

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COMPLAINT AND WARRANT

The State of Alabama
CALHOUN COUNTY

Before me, W. C. Daniel, Judge / D. McCargo, Clerk of Calhoun County Court, personally appeared _____

who, being duly sworn, deposes and says he has probable cause for believing, and does believe that in said State and County, and before making this affidavit _____

did violate the Alabama Motor Vehicle Law as indicated below by an "X" mark

( ) DRIVING WHILE INTOXICATED
( ) RECKLESS DRIVING
( ) SPEEDING
( ) NO DRIVERS LICENSE
( ) DRIVING AFTER LICENSE REVOKED
( ) ALLOWING ANOTHER TO USE LICENSE
( ) ALLOWING A MINOR TO OPERATE A VEHICLE
( ) CHANGING NAME TO CONCEAL IDENTITY
( ) OVER ☐ LENGTH ☐ WIDTH ☐ HEIGHTH ☐ WEIGHT TRUCK
( ) IMPROPER ☐ MUFFLER ☐ BRAKES ☐ LIGHTS ☐ PARKING ☐ PASSING ☐ LOAD ☐ TAG ☐ TURN
( ) PASSING SCHOOL BUS
( ) HIT AND RUN DRIVER
( ) FAILURE TO ☐ STOP AT STOP SIGN ☐ SIGNAL ☐ YIELD RIGHT-OF-WAY ☐ DIM LIGHTS ☐ YIELD DRIVERS LICENSE
( ) DRIVING WRONG SIDE OF ROAD
( ) FOLLOWING TOO CLOSE
( ) NO BINDER ON LOAD
( ) NO FLAGS OR FLARES
( ) RESISTING ARREST
( ) ILLEGAL TRAILER
( ) _____
( ) _____
( ) _____
( ) _____
( ) _____
( ) _____

Charge _____

against the peace and dignity of the State of Alabama. Signed _____

Sworn to and subscribed before me, this _____ day of _____ 197__

_____
Judge - Clerk of Calhoun County Court

The State of Alabama
CALHOUN COUNTY

TO ANY LAWFUL OFFICER OF THE STATE OF ALABAMA:

You are hereby commanded to arrest _____

and bring _____ before the Calhoun County Court, on the _____ day of _____ 197__, to answer to the State of Alabama on a charge of _____

against the peace and dignity of the State of Alabama, preferred by _____

Witness my hand this _____ day of _____ 197__

_____
Judge - Clerk of Calhoun County Court

Witnesses for the State _____

Witnesses for the Defendant _____

No._____

WARRANT

THE STATE

vs.

_____

_____

_____

_____

IN THE

Calhoun County Court

Bond fixed at $_____

_____
Judge

Executed by arresting the defendant,

_____

and releasing_____on bond (or)

confining_____In County jail.

This_____day of_____19____

_____
DEPT. OF CONSERVATION OR STATE TROOPER

_____
SHERIFF

By_____
DEPUTY SHERIFF

COST

SHERIFF'S:	
Arrest	$_____
Bond	$_____
Guard	$_____
Witness Subp.	$_____
Mileage	$_____
Seizure	$_____
Search Warrant	$_____
Finger Print	$_____
_____	$_____
TOTAL SHERIFF'S	$_____
COURT:	
Fair Trial Tax	$_____
Judge's	$_____
Clerk's	$_____
Solicitor's	$_____
Witness Fees	$_____
STATE TROOPER—Arrest	$_____
GAME WARDEN—Arrest	$_____
GAME WARDEN—Bond	$_____
CONSTABLE—Arrest	$_____
P.O.E. FUND	$_____
JUSTICE of the PEACE	$_____
_____	$_____
TOTAL COST	$_____

16

COMPLAINT AND WARRANT

THE STATE OF ALABAMA
CALHOUN COUNTY

Before me, [W. C. Daniel, Judge][D. McCargo, Clerk] of the County Court of Calhoun County, Alabama, personally appeared _____ who, being duly sworn, deposes and says he has probable cause for believing, and does believe that in said State and County, and before making this affidavit _____ whose name is to affiant otherwise unknown did commit the offense indicated below by an "X" mark.

( ) Did hunt upon land in Calhoun County other than his own, without a license

( ) Did hunt on private land in Calhoun County without first obtaining a permit to do so

( ) Did hunt ( ) Squirrel ( ) Deer ( ) Quail ( ) Turkey in closed season

( ) Did hunt by use of firearms at night time

( ) Did fish in the public waters of Calhoun County without first obtaining a license to do so

( ) Did take or attempt to take fish by use of an electrical device

( ) Did use commercial fishing gear without first properly marking same.

( ) Insufficient Signal Device Aboard (Night Operation or Inclement Weather)

( ) Failure to Have Fire Extinguisher of Approved Type Aboard Vessel

( ) Scuba Diving Without Displaying Divers Flag

( ) Failing to Comply with Restrictive Signs or Divers Flag

( ) Operating A Vessel Under the Influence of Alcohol, Drugs, or Barbituates

( ) Reckless Operation

( ) Operating Un-numbered Vessel

( ) Improper Registration Number on Boat

( ) Not Registered for Current Year

( ) No Registration Certificate Aboard

( ) Conducting Race/Regatta Without Obtaining Permit

( ) Renting or Giving Permission to Use Un-registered Vessel

( ) Giving Permission for Person Under 12 to Operate Vessel

( ) Giving Permission to Operate Vessel Without Adequate Safety Devices

( ) Failure to Submit Report Within 10 Days Following Accident

( ) Operating Vessel Without Sufficient C. G. Approved Life Preservers Aboard

( ) Skiing Without Ski Belt or Life Preserver

( ) Towing Skier After Hours of Darkness

( ) Towing Skier Without Observer or Rearview Mirror

( ) Over-Loading Vessel

( ) Over-powering Vessel

( ) Operating at Night Without Sufficient or Proper Lights

( ) _____

Charge _____

_____

against the peace and dignity of the State of Alabama. Signed _____

Sworn to and subscribed before me, this the____ day of _____ , 19____ .

_____
Judge - Clerk of the County Court of Calhoun County

THE STATE OF ALABAMA
CALHOUN COUNTY

TO ANY LAWFUL OFFICER OF THE STATE OF ALABAMA:

You are hereby commanded to arrest _____

and bring _____ before the County Court of Calhoun County, on the _____ day of _____ , 19____,

to answer to the State of Alabama on a charge of _____

against the peace and dignity of the State of Alabama, preferred by _____

_____

Witness my hand this _____ day of _____ _____ , 19_____

_____
Judge - Clerk of the County Court of Calhoun County

Witnesses for the State _____ _____

_____

_____

Witnesses for the Defendant _____

_____

_____

_____